BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS THIRD CIRCUIT.

Form of Brief: A redrafting of a Brief of D. E. Cuppet, in Long v. Babcock Lumber Co. See Decision on pp. 93 to 97 of Declaration.

Nicholas J. Curtis, LL.B., Petitioner, Appearing in Person, No. 106 Mansion St., Poughkeepsie, New York.

STATEMENT OF FACTS

Nicholas J. Curtis, as plaintiff in his own behalf, instituted his suit in the United States District Court District of New Jersey against the defendants above named, and on the First, Third, Fourth and Fifth Counts laying the damages in the sum of $6,341.11 and threefold that amount in the sum of $19,023.33, against the defendants or in the alternative against the Utah Fuel Company and three of its doctors named above as defendants; and charging the defendant Utah Fuel Company and its said doctors with wilful negligence on their parts in failing to promptly procure medical services, medical care, surgical operation, and hospitalization and/or hospital attention for Dan J. Curtis, an employee of said defendant Utah Fuel Company and brother of this plaintiff; and charging the defendant Utah Fuel Company and its said doctors of having drafted this plaintiff and assigned him or compelled him to use his own home as hospital, spend all the moneys necessary to care for its said patient-employee for or about 40 days, then remove and transport him with his own moneys to Salt Lake City to defendant's general hospital; and charging that after 60 days of malpractice in the home of this plaintiff to, at his own expenses, transport its said employee-patient to St. Mark's Hospital whereat, the defendant company, through its said doctors, charged its said employee-patient with incurable tuberculosis and gave to this plaintiff notice of that fact, having first removed said employee-patient from its hospi-

tal (tubercular cases not allowed to stay in said hospital. See p. 104 of Declaration) and having put him out of it in a porch on the ground floor unsuitable for any person to be confined; and charging the said Dan J. Curtis, as such an employee had paid into a fund created for such purpose a monthly sum of money for such care and attention, and that the defendant company by reason of such contractual relation, and the Industrial Act of the State of Utah, was under duty to furnish such care and attention to him; and that while said Dan J. Curtis was employed and while on duty, he was suddenly taken violently ill, or was injured while so employed on hazardous R. R. Extra Gang work, and that he kept reporting his case to the defendant's doctor at the defendant's local hospital, and was not taken into the hospital, and was not given any medical attention at all, but was sent to the house of this plaintiff with directions—get out of here,—and when taken to said hospital by this plaintiff he was examined by the defendant's doctor and pronounced his case as "coming down with pneumonia" advising that the patient will be operated upon by him in the morning; that no such operation were ever performed by the doctors of the defendant Utah Fuel Company for a period of 40 days; that during said 40 days the defendant's doctor, defendant doctor Murphy, visited the said Dan J. Curtis once a day in the home and under the care of this plaintiff and gave castor oil capsules and other tablets and directed this plaintiff to timely give them to him; that at the end of forty days malpractice this plaintiff asked the defendant's doctors to send Dan J. Curtis to the defendant's general hospital and gave notice to him or them that he was not going to stand their malpractice any longer but that in case they refuse to remove the dying man from his home this plaintiff will use force, legal proceedings, to remove his dying brother to a hospital, or will remove him at night secretly; and that then and only then the defendant's doctors ordered, directed and assigned the plaintiff to, at his own expenses, remove him from his home at Clear Creek, Utah, to

its general hospital at Salt Lake City, Utah, and deliver him to the defendant's doctors there for proper medical attention and surgical operation; and that this plaintiff in the morning he removed his brother, the said Dan J. Curtis, from his then home and in doing so he was assisted to the train and on the train by the defendant's doctor then in charge of the local hospital in person; that at its general hospital its said employee-patient was received by the defendant's doctors and admitted to the defendant's hospital as the defendant's employee-patient and this plaintiff was relieved from any and all further duties to care for his said sick brother; this lasted for or about a week when the said Dan J. Curtis was put out of the hospital as an incurable tubercular and left to die outside the defendant's hospital; these did not agree with the diagnosis of the defendant Dr. E. R. Murphy first given at Clear Creek, Utah, and by reason of his love and sympathy for his natural brother and because Dan J. Curtis was put out of the defendant's hospital without any medical examination and care whatsoever, he had grown much worse by reason of lack of medical attention and care in the hospital; that then and only then and on said date plaintiff went to the Holy Cross Hospital and contracted admission to the same for Dan J. Curtis and in his behalf, and to Dr. Tyndale and his Associates for their services in the case and promised to pay and did pay doctors' consultation, Ex-Ray examinations, surgical operation, medicines, visits and all necessities necessary to take care of the sickness of the employee of the defendant Utah Fuel Company; the successful results of the hospitalization, medical treatment, care and operation in the case demonstrated that it was the hospitalization, care, treatment and operation reasonable required to cure and relieve the said Dan J. Curtis from the effects of his sickness or injury, that being so the refusal of the defendant's doctors, after more than 60 days of malpractice, to furnish the dying man the necessary hospitalization, medical and surgical care and operation warranted his removal to a private operated hos-

pital and placed under the care of private doctors. In the rest of the Counts the plaintiff charges the defendant Utah Fuel Company and its officers and agents for having conspired together and formed a deliberate design and purpose to deprive this plaintiff of his natural rights by and through the formation of a seditious conspiracy continuous and to continue the entire lifetime of the plaintiff and leave a loathesome memory for the hereafter; to do everything necessary to suppress their said theriodies and other crimes suppressed by them; to do and commit every act necessary to carry out their plot so by them formed; to by all means suppress the administration of laws and constitutional rights wherever this plaintiff may go; to maliciously prosecute by informations and otherwise and by perjury and subornation of perjury and trial by mob trial and convict this plaintiff for taking his brother from their death bed in front of the municipal bath house at Salt Lake City, Utah, and for filing suit against the defendant, Utah Fuel Company and its co-conspirators; to falsely and maliciously imprison this plaintiff and hold him thus for deportation till they caused him to be deported out of the United States in company of one Christ Zavis, his cousin, and to keep the same in force and operation by all means that money can buy, thereby subjecting this plaintiff to the attacks and insults of all persons having knowledge of their conspiracy or plot; after a period of 24 long years of malicious and barbaric prosecutions they now paid H. Collin Minton, Jr., to go into the United States District Court for the District of New Jersey and move to defeat the ends of justice and the due course of the administration of the laws by said court, in that this plaintiff on the first day of July, 1940, presented to and filed with the Clerk of this Court his application for default judgment against the defendant Utah Fuel Company and Bamberger Coal Company, the Utah Fuel Company owns the entire capital stock and the records show that these corporations are two in name and one in fact, Simon Bamberger was one of its incorporators-owner-President-director and Governor of

the State of Utah and Governor of the State Insane Asylum for the Criminal Insane wherein he, Bamberger, want only kept this plaintiff under barbaric brutalities, starvation, freezing, blows and beatings to force him to submit to life imprisonment therein to suppress the above stated theriodies, therein the said H. Collin Minton, Jr., while the defaults were being pressed against him and others, he moved and stated to the Court that he then say that he represent all those who are not represented by an attorney; the plaintiff objected and moved to produce defendant's motion or demurrer and was stopped by the Court from producing said motion or demurrer and Special Appearance thereto and heatedly advised this plaintiff that Mr. Minton now says that he appears for all the defendants who are not represented by an attorney and that the Court will be guided by that in the future. May it please the Court see the Stenographer's reports of the Hearing and of the Hearings in Default of appearance of the said H. Collin Minton, Jr.

May it please the Court see the Declaration and the Documents of the Record of the pleadings listed on p. 2-6 (typed record)—in order to cut it short here and save the costs of printing. It has been made a hard struggle for the plaintiff.

Petitioner was first employed by the Utah Fuel Company in the last part of the year 1907. A short while thereafter he was drafted by the defendant company's Superintendent and General Superintendent and inducted as the defendant's interpreter and directed to take care of all cases of employ, attend all cases of sickness and injuries and assist the company's contract doctor in every case and the Superintendent in the adjustment of claims of injuries and deaths arising out of or in the course of their employment. Petitioner was paid the sum of $15.00 per month for his said services. The officials of the defendant, Utah Fuel Co., were working for the company and the injured, sick, and dead had no right to complain. All these grievances have had their recourse on this petition as for his part in the cases. For these reasons petitioner was compelled to quit the in-

terpreter's job as he was never benefited by it. Accordingly he gave notice to the Officials of the defendant company to the effect that he did not wish to serve the company in that capacity and thereupon he refused to receive his pay statement till the interpreter's pay was taken off. The company superintendent reported the fact to the defendant company and it conducted an inquiry into the case held the same in the main offices at Clear Creek, Utah, and have had with them Mr. Louis Skliris, interpreter general, as investigator. Petitioner was afraid to give out the true reasons but said that he was not benefited by the job. As a result of this investigation the investigators ordered two months' back pay be added to the petitioner's statement and be asked to proceed and serve the defendant company. The pay roll clerk added the $30.00 to the statement and asked the petitioner to kindly sign it and receive it and proceed to help them saying that he wished he had some one to give him $30.00. Petitioner refused to sign the statement and give notice that he will not sign it at all till the interpreter's pay was taken off. The pay was so taken off and petitioner refrained from any further activity in that respect up to 1918. There is one exception to this and that is on a murder inquest in which appellant was summoned by the justice of the peace and served the court.

In June, 1917, petitioner's brother became sick or was injured (Please see the Record and Declaration) and the defendant Utah Fuel Co., through its contract doctor, refused him the benefits of its medical system and drafted petitioner and inducted him to use his own home as hospital and himself as nurse to take care of a case for which it collected thousands of dollars every month from its employees. As to these petitioner have had no saying in the conduct of the case by the company's contract doctor and that of its superintendent who was by the house every day. Petitioner had to play nurse and do that which he was told to do. The company's practice were to put the objector on the first train out of town for good and as many as 40-50 at one time. Petitioner had to play nurse until death came to his brother in

his own home. Death was so near as to cause the anxiety of all friends in the mining town and Scofield near by town. There was no private doctor to be had in the case there at that time. Petitioner have had to force the defendant's contract doctors to remove his sick brother from his home to the defendant's hospital. At the hospital petitioner's brother was refused the needed medical attention and surgical operation, etc., and was put out of the hospital by the defendant's contract doctors. These or those doctors gave to the petitioner notice to the effect that his brother was an incurable tubercular and there was not a thing they could do in the case. At this point of the plot petitioner was obliged to live in Salt Lake City, Utah, and wait the death of his brother so that he can bury him.

Labat Master and Servant, Sec. 2000, p. 6186.

But a servant to whom the stipulated benefits have been refused is bound to keep down the damages as far as possible, and to this end should engage a doctor.

For the expense so incurred the employer will be liable. Illinois C. R. Co. v. Gheen, 112 Ky. 695, 66 S. W. 639, rehearing denied in 112 Ky. 704, 68 S. W. 1037, and See Jackson v. Pacific Coast Condensed Milk Co., 37 L. R. A. (N. S.) 757; Sec. 2001; Gibson v. O'Gara Coal Co., 151 Ill. App. 424.

The defendant company having refused the stipulated benefits to the petitioner's brother and having put him out of its hospital and given notice to the effect that he was an incurable and therefore they could not do anything for him, petitioner became "bound" to keep down the plot and to that end to employ or engage a doctor and hospital. These the petitioner did do.

"Who will pay funeral expense to bury his brother rather than pay a doctor's and hospital's honest bills to save the life of his then beloved brother?

Having rescued his brother from the death bed of the defendant company he was forced to give up his employ and leave the company's town. Thereafter the defendant Company by concerted action obstructed the administration of

justice or the due administration of the laws (R. S. of Ut. Ch. 11, Conspiracy) by the Third Judicial District Court of Salt Lake County, Utah. See Curtis vs. Utah Fuel Company, certified copy of the proceedings in the hands of the District Judge at Newark, N. J.; Curtis v. Utah Fuel Company, et als. No. 5547, U. S. Dist. Ct. Dist. of Utah; In Equity Curtis vs. Utah Fuel Co. et als. U. S. Dist. Ct. Dist. of Utah, wherein by concerted action, perjury and subornation of perjury (State of Utah vs. Nicholas J. Curtis, Dist. Ct. of Salt Lake County, Utah) the defendant company succeeded in driving the petitioner and his brother out of the state of Utah and as to the brother out of the United States. As to the petitioner's character crimes are matters of Record. See petitioners Record as well as in the United States as in Greece.

After being first out of the State of Utah and in the year 1924, petitioner endeavored to make a stand in the district of New Jersey and to seek employment there. For the results please see the Record.

The plot is before the Federal Court for the District of New Jersey ever since the year 1927, but it refuses to proceed and deal with it, try it, determine it and punish offenders against Federal laws; and by its silence it sanctions the plot and the commission of overt acts in furtherance of the common design. The defendant company is present within the jurisdiction of the Federal Court and it is protected from prosecution.

Take for instance the part of the crimes of Harry Sussman, one of the defendants in the present suit. In the year 1927, the U. S. Deputy Marshal went to serve him and reported him dead. In the year 1940, he went to serve him and reported him out of district. He was suborned by the defendants Pappases and Rosenkranz to commit corrupt and wilful perjury to help them obstruct justice and the due administration of the laws by the Paterson, N. J. District Court thereby falsely and maliciously cheat and defraud the petitioner and introduce the plot of the Utah Fuel Com-

pany into the Courts of the State of New Jersey. He appeared in Court, committed corrupt and wilful perjury and obstructed justice thereby they cheated and defrauded this petitioner out of his hard earned money and the plot was put on the Records of the Court, and now to the eyes of the U. S. Marshal now is dead and then out of district and at all times he is hiding here and there with full immunity from the law.

All these have been brought to the attention of the Federal Court at Newark and Trenton every now and then by the petitioner but that the Federal Court stands fast to its reluctance to punish offenders and at the same time throws before itself every obstruction available to it.

Such are the direct averments of the Declaration which is challenged by the demurrer of the defendants, this said demurrer is forbidden by the provisions of Fed. Rule 7 (c) which provides: Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

For Statements, references, and authorities against said motion and its Special appearance or demurrer see plaintiff's Opposing Affidavit. pp. 7-31 typed Record.

AUTHORITIES IN SUPPORT OF THE DECLARATION.

Let us enquire what duty rests upon the master to furnish medical aid to the servant.

Under the earlier English decisions it was the duty of the master to furnish medical aid and attention to the servant, as an incident of the employment, and independent of any express promise so to do. However, the later cases seemingly, both English and American, have departed from this ruling, but are equally uniform in holding that the master by contract, may assume this duty and obligation, and when assumed, a breach of this duty gives rise to a cause of action and makes the master responsible in damages for a resulting injury or death. It will be noticed in this case that the declaration expressly avers that the defendant had con-

tracted with the said Dan J. Curtis to furnish him with medical and hospital services, and collected from his wages, over its pay roll, a compensation for such service.

Labat on Master and Servant, Vol. 5, Sec. 1999, etseq, says:

"In some countries the legislature have explicitly (See Ind. Act of the State of Utah) recognized and regulated the right of employers to make deductions from the wages of servants for the purpose of furnishing them with medical attention as they may require. But even in the absence of such provisions the validity of such stipulation between the parties is indisputable. Under arrangements of this character the employer may be held liable for any damages which proximately result from his failure to furnish such attendance as is contemplated."

See specially Sec. 2000, same Vol. page 6182 where this doctrine is laid down.

In a case very much like the one at bar as to the facts, that is, Harding v. Ostrander R. & Timber Co. 64 Wash. 224; 116 pac. 635, the court held: "It is alleged that a hospital fee was exacted and with-held; that the appellant was prostrated; that respondent had a logging road with engines and equipment at hand for conveying the appellant to the hospital; that it knowingly left him lying prostrated for a period of twenty-four hours, and that his pain and anguish were augmented and his damages otherwise aggravated thereby. The rule of implied liability to furnish free transportation to a hospital, when hospital fees are with-held from the wages of an employee, has usually been applied to common carriers. But we think the same obligation arises from the facts alleged here."

By the English Truck Act, 1 & 2 Wm. IV, (For the case at bar: See Industrial Act of the State of Utah; R. S. of Utah, Title 42, Chapter 1. 42-1-50-. Agreements in Lieu of Compensation and Benefits) it is provided that a master may make deductions from servant's wages in respect to medicine or medical attendance which he has agreed to sup-

ply. A similar power is constantly exercised, without any express statutory authorization, without any questions being raised to its legality by the employers who adopt regulations under which a small portion of the wages of their employees is with-held, for the purpose of keeping it, in whole or in part, as a fund devoted to the maintenance of free hospitals at central parts, and to the payment of the fees of such medical men as may be retained at other places. If an employer had undertaken to make arrangements upon this footing, of the treatment of his injured or sick servants, he is liable for any damages which are the proximate result of his refusal or negligent failure to perform his engagements. American Tin Plate Co. v. Guy, (1900) 25 Ind. App. 588; 58 N. E. 738. In this case the company's physician altho notified of the injury, failed to give the injured person the necessary treatment, and held that a cause of action arose. See 4 L. R. A. N. S. page 56.

The Courts of the State of Utah and the Industrial Commission of Utah which consists of three Commissioners are equally uniform in holding, that the master by contract, may assume this duty and obligation (this is state wide quite common for almost all mining companies and corporations doing business in the State of Utah) and when assumed, a breach of this duty gives rise to a cause of action and makes the master responsible in damages for a resulting injury or death. Long v. Babcock Lumber Co. See pp. 93 to 97 of Declaration. See cases, parts of cases and citations cited and set out on pages 49 to 109.

In a case very much like the one at bar as to the facts, that is, Tony Flementis v. United States Fuel Company. See full text of Decision on pp. 98 to 108 of Declaration.

This matter is before the Court to determine whether or not Nicholas J. Curtis, the plaintiff in the suit at bar, should be reimbursed for the amounts stated in the First Count of the Declaration and Exhibit A. thereto.

In that case, in view of the similarity of facts, the Com-

mission concluded: (See Conclusion set out last par. of page 106, cont. 107, and 108.

As to the fulfillments of the requirements of Rule 24, 2 (f) C. C. A. 3rd C. See and read in Paragraphs of plaintiff's Opposing Affidavit numbered: 18, Points (a) to (i); 19; 20; 22 where the R. S. of Ut. are cited and set out, and where reference is made where the Industrial Act of the State of Utah is set out and annexed to the Declaration. 23, especially Points (a) to (s): and 27 (a) to (d);

R. S. of Utah.

42-1-18. ORDERS OF COMMISSION PRESUMED LAWFUL.

42-1-8. JUDICIAL NOTICE—COPIES OF RECORDS. EVIDENCE. See page 108 of Declaration.

The decision is controlling authority of the case at bar.

Let us inquire what duty rests upon the master to compensate one of its or its employees whom he drafts and directs to perform the master's duties and obligations. The Courts of the State of Utah and the Industrial Commission of the State of Utah are equally uniform in holding that in such cases the employee is within the provisions of the Industrial Act. Kahn Bros. Co. et al v. Industrial Commission of Utah, 75 Utah 145, 214 P. 1054. See pp. 84 and cases cited thereunder and thereabove; Morgan v. Industrial Commission of Utah, p. 86 of Declaration; Vitagraphy, Inc., v. Ind. Commission, pp. 82-83 and cases cited thereunder; Test is whether business can fairly be called master's. Ford Motor Co. v. Industrial Commission, p. 81 and cases cited thereunder; Arising out of or in the course of employment. Frick, J. last par. on page 80 and cases cited; Morgan v. Industrial Commission pp. 79; (71 C. J.) p. 77; Matter of Marks v. Gray, p. 76; Kahn Bros. again pp. 69 to 73 of Declaration; Morgan v. Industrial Commission again pp. 62 to 69;

Findings supported by any substantial competent evidence are conclusive. See citations on pp. 57 to 59.

MASTER AND SERVANT. See pp. 60-61 of Declaration.

Right of employee to change doctor. See citations on pp. 49 to 52; other jurisdiction see Arenson v. Robinson p. 52.

Let us inquire what duty rests upon the master to furnish medical aid, etc., to an employee under the Industrial Act of the State of Utah. See Ind. Act beginning on page 44 of Declaration to 49½; pp. 60-61; pp. 89-90-91.

Let us inquire what the Constitution of the State of Utah provides: See pp. 91-92 of Declaration.

Let us see what is the scope of the Federal Rules of Civil Procedure for the District Courts of the United States are.

These said Rules govern the procedure in the district courts of the United States in all suits of civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They are to be construed to secure the just, speedy, and inexpensive determination of every action. Rule 1.

Let us see what some of these rules are:

WRIT OF SUMMONS. OFFICIAL FORM NO. 1. See par. 5 of Application for Entry of Default Judgment on page 51 of Record of pleadings.

A defendant shall serve his answers within 20 days after the service of the summons and complaint upon him. Rule 12 (a); . . . the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process, insufficiency of service of processes, (6) failure to state a claim upon which relief can be granted. R. 12 (b). In the case at bar no one of these said defenses is present. The demurrers filed are groundless and forbidden by the rules. For an attack against defendants' motion or demurrer and special appearance see plaintiff's Opposing Affidavit to the same pp. 7-31 typed Record of the Pleadings. See 2d par.

of Rule 78 F. R. C. Proc. See Plaintiff's Praecipe to the Clerk to stop the hearing of the demurrer before Judge Forman page 32 of the Record of the Pleadings. Default. Entry, Rule 55 (a). See Application for Entry of Judgment made to and filed with the Clerk, pp. 33 typed Record of Pleadings. See Mem. on general status of the case, pp. 57-60 typed Record of Pleadings.

AUTHORITIES IN SUPPORT OF PLEADINGS, THE ENTRIES OF DEFAULTS.

Defaulting party has lost his standing in Court. Clifton v. Tombs. See par. 5 of Mem. to general status of the case p. ; 21 F. (2nd on p. 897. (3-4) When a party is in default and a bill taken pro confesso, while the court will give only such relief as is proper upon the bill, nevertheless the party himself has lost his standing in court, cannot appear in any way, cannot adduce any evidence, and cannot be heard at the final hearing. Frow v. Wooster. It is true that it is within the inherent power of the court to set aside a decree pro confesso (O'Brien v. Lashar (C. C. A. 2nd) 273 F. 520), and the court has that power also by equity rule. 5. But the party in default should show good cause before the default should be set aside. Furthermore Rule 17 provides that, when the bill is taken pro confesso, the court may proceed to a final decree at any time after the expiration of thirty days after the entry of the order pro confesso, and such decree shall be deemed absolute unless the court shall at the same term set aside the same or enlarge the time for filing the answer upon cause shown upon motion and affidavit; The plaintiff (defendants here in the case before the Court) made no motion to set aside the default or for leave to reply to the counter claim (complaint here). If he had made such motion and had shown some excuse for his failure to reply (plead or answer here) . . . There is a strong and indeed strict, analogy in this respect between default in actions at law and proceedings upon bills pro confesso in equity. Thompson v. Wooster, 114 U. S. 104,

111, 5 S. Ct. 788, 29 L. Ed. 105; Central R. R. Co. v. Central Trust Co., 133 U. S. 83, 90, 10 S. Ct. 235, 33 L. Ed. 561.

A default is now a default, at law or in equity. The Annual Practice, 1911, p. 380 "Default in Pleading."

EFFECT OF TAKING THE BILL PRO CONFESSO—The effect of the order was summarized in the words "a decree pro confesso regards the statements of the bill as confessed." Thompson v. Wooster, 114 U S. 104, 29 L. Ed. 107. In that case Mr. Justice Bradley said, "that to take a bill pro confesso is to order it to stand as if its statements were confessed to be true—a decree pro confesso is a decree based on such statements, assumed to be true, and . . . as binding and conclusive as any decree rendered in the most solemn manner," which cannot be impeached collaterally, but only upon a bill for review or a bill to set it aside for fraud.

STATUS OF THE DEFENDANT AFTER THE ORDER AND BEFORE THE DECREE—The order taking the bill pro confesso is in no sense a decree pro confesso, but the case indicates that the defendant no longer has a right to be heard as to the form and scope of the decree. He is not entitled to notice of the application for the decree. Austin v. Riley, 55 Fed. 833, 837; The defaulting defendant has merely lost his standing in Court. Mr. Justice Bradley, in Frow v. DeLa Vega, 15 Wall. 552, 21 L. Ed. 60.

"FILE ANSWER WITHIN SUCH TIME AS THE COURT SHALL DIRECT." O'Brien v. Lashar, 273 Fed. Rep. 520 (C. C. A. 2).

The general effect of the entry of the default is that of the decree pro confesso of Equity Rule 16. The latter's effect has been stated: "When a party is in default and a bill taken pro confesso, while the court will give only such relief as is proper upon the bill, nevertheless the party himself has lost his standing in court, cannot appear in any way, cannot adduce any evidence and cannot be heard at the final hearing. Moore's Fed. Practice p. 3165. Citing: Clifton v.

Tombs (C. A. A. 4th) (1927) 15 Wall. 552, 554, 21 L. Ed. 60, and Thomson v. Wooster, 114 U. S. 104, 112, 113, 114, 5. S. Ct. 788, 29 L. Ed. 105, which supports the text; see also Austin v. Riley (C. C. S. D. Ia. 55 Fed. 833, 837; Interstate Commerce Commission v. Daley, No. 55 Dist. Ct. District of Massachusetts F. 13, 1939. McLellan, Dist. J. This cause come on for a hearing today on the motion list upon the plaintiff's motion for judgment on the pleadings. . . . Under the circumstances the motion for judgment on the pleadings is not granted. But it would seem that a default may now be entered under the rules of Civil Procedure for District Courts, Rule 55, (b) (2), 28 U. S. C. A. following section 723c upon application therefore by the plaintiff.

United States, for and in behalf of Federal Housing Administration v. Jackson et al. 25 F. Supp. 79. District Court Dist. of Oregon, Sept. 30, 1938. James Alger Fee, Dist. J. Application has been made in this case for the entry of the default of the defendant. From the record it appears that a judgment for affirmative relief is sought and the defendant has failed to plead or otherwise defend. Appropriate affidavit has been filed under Rule 55, Rules of Civil Procedure, 28 U. S. C. A. following Section 723C, this default should be entered by the Clerk as of course without any application to the Court. However, since the Court has power to enter an order of default and Rule 55 is not a limitation thereof, the court grants the motion and enters the default.

In future cases, however, where the requirements set out in the rule are fulfilled, the Clerk will enter a default and no order will be entered by the court.

M. Fed. Pr. R. 55-02. A judgment entered by default where the court has jurisdiction of the person (see Atchison, Topeka & Santa Fe Railway Co. v. Wells, 265 U. S. 101 44 S. Ct. 469, 68 L. Ed. 928) and of the subject matter has the same effect as any other judgment on the merits. See Hefner v. North Western Mut. Life Ins. Co. 123 U. S. 747, 8 S. Ct. 337, 31 L. Ed. 313 . . . where the record supports

the judgment, the defaulted party's remedy is to move the trial court to set aside the default judgment and permit him to plead.

Rose Collester, Appt. v. Inter State Fidelity Bldg. & Loan Association of Utah; Arizona Sup. Ct. December 7, 1937. 38 P. (2nd) 626; A. L. R. A. 98 page 1021. A default judgment admits as true all the material allegations properly set forth in the complaint, and is just as binding and conclusive as though it had been rendered after answer and contest. See R. C. L. title "Judgments," Sec. 461, 667, 669, and 987; Sodine v. Sodine 94 Min. 301, 102 N. W. 861, 110 Am. St. Rep. 371; Tub City Min. & Mill. Co. v. Otterson 16 Ariz. 305, 146 P. 203, 206, L. R. A. 1916E1; Last Chance Min. Co. et al. v. Tyler Min. Co. 157 U. S. 683, 15 S. Ct. 733, 39 L. Ed. 839.

15. R. C. L. Judgments. Sec. 461. Conclusiveness of Default Judgments and Decrees Pro Confesso.—The rule as to conclusiveness of judgments applies to a judgment by default. Citing: 7 L. R. A. 578, and a judgment of the same court, or one of concurrent jurisdiction even if rendered by default, ordinarily operates as res judicata and may be pleaded in bar as an estoppel. When properly entered, it is conclusive and binding between the parties as to the matters litigated. Citing: Tootle v. McClellan, & Indian Terr. 64, 103 S. W. 766, 12 L. R. A. (NS) 941.

Pleading and Practice in New Jersey—Revised Edition. Geo. S. Harris, 1939. Sec. 582. Judgment by Default.—Grounds for. Whenever defendant fails to comply with the rules of pleading he lays himself open to an entry of judgment by default. R. S. 1937, 2:27-191; Cumul. Suppl. to C. S. 163-290. Illustrations of cases wherein judgments by default have been entered against defendants are: when the defendant fails to file an answer to complaint within twenty days after the service of summons and complaint, (R. S. 1937, 2:27-292; C. S. c094, Sec. 133; S. C. R. (1938) 76; See Sec. 390, Sec. 391, (upon failure of a party to plead according to the rules, a judgment of non-suit or judgment by de-

fault may be entered respectively by defendant or plaintiff. Sec. 391. Citations: Harris, Cont. Sec. 582. A rule for judgment by default may be entered by the plaintiff as of course, either in term or vacation without any special order of the court. R. S. 1937, 2:27-192; C. S. 4094, Sec. 100; See Sec. 391. Sec. 599. Affidavit for Setting Aside Judgment. Citations;

Kocher and Tryer, New Jersey Chancery Practice. Chapter VI. Decree Pro Confesso. Sec. 250. In General. When the time limited for the appearance of the defendant has expired, the complainant's solicitor will file the proofs . . . of service of notice or subpoena in the Clerk's Office, at the same time mailing to the Clerk a decree pro confesso against such of the adult defendants as have not answered. The decree will be entered by the Clerk without notice and of course. Dickinson's Ch. Pr. 34.

Moore's Fed. Pr. page 3159. A default judgment may be set aside in accordance with Rule 60 (b). Cases, procedure and citations.

Relying upon the dates of services of summons and complaint upon the defendants and the entries of defaults against six out of seven DEFENDANTS (D. O. Larson and Wm. H. Folland were overlooked, his, Larson's, default was entered July 1st, 1940, Folland's default has not been entered) and upon the authority of the cases set out above; rules of Civil Procedure for the Federal District Courts, and Text Books, plaintiff in his first 8 paragraphs of his Assignments of Errors charged the Hon. Thomas Glynn Walker with abuse of the Courts discretion, and it would seem that the charges are proper. The charges are proper because the United States Marshal's returns show that he served Doctor E. R. Murphy with summons and copy of the complaint on April 8, 1940. The District Court is always open for the purpose of filing any pleading or other proper paper. R. 77 (a). The record of the case by which the court should be guided, and of which should take judicial notice, because of a judgment, order, or

decree must conform to and supported by the pleadings otherwise it would be not judgment, does not show any pleading or other proper paper filed by or in behalf of Dr. E. R. Murphy; to the same effect with Charles W. Kutz. Praecipe for entry of default against Dr. Murphy and Charles W. Kutz was mailed to the Clerk on May 2, 1940, received and filed by the Clerk 3 (3-4) of May, 1940; that will be 23-24 days excluding the day of service and legal holidays.

On information and belief had in 1928 when this plaintiff went back to Salt Lake City, Utah, Dr. E. R. Murphy has not been employed by the defendant Utah Fuel Company. There were no appearance, no pleading or other proper paper filed, and there is none, see the record. When the plaintiff presented to the Clerk, July 1st, 1940, his Application for Entry of Final Judgment (See the Application pages 51-56 Typed R.) it was understood that it should be held up for a week to amend the prayer of the Declaration to conform to the amount demanded in Exhibit A and Second Count. To the same effect with Mark Tuttle, and D. O. Larson, this defendant, Larson, was overlooked because this plaintiff had to leave his room and office at Ridgewood, N. J., and look for work, but application was made for the default on July 1st, 1940. No Appearance. No objection. No pleading or other proper paper filed. As to the defendants Drs. Fred. W. Taylor and Leslie Paul see Amendment to the complaint to change their names pp. 35-37 typed record; As to the Bamberger Coal Co. see Motion to Substitute it in the place of the defendant Simon Bamberger pp. 39-45 typed record.

The United States Marshal's Return of Service of Summons and copies of the complaint show that he served Dr. Leslie J. Paul and Bamberger Coal Co. on May 22, and Dr. Fred Taylor on May 24, 1940. No Answer. No Appearance. No Pleading or other paper filed. Return day of motion to substitute Bamberger Coal Co., Monday, the 10th day of June, 1940. This said Motion came on to be heard and ar-

gued in open court on a regular Motion Day of the Court. No Appearance. No Opposition. Plaintiff Appeared and answered the call of his motion and asked Mr. Jaekel, the Deputy Clerk, to call out and see if there were any one appearing in opposition. He did as usual. No answer. Default.

On June 17, 1940, plaintiff mailed praecipe for Entry of Default against the last three named defendants. We will say that the Clerk received the Praecipe June 20, 1940, that would be 24 days, excluding Sundays and legal holidays and the day of service. But up to the 1st day of July, 1940, when plaintiff presented to the Clerk his Application for default judgment there were no pleading or other proper paper filed by or in behalf of these said three defaulted defendants. Nor there were any received by the Clerk to be filed.

On the 1st day of July 1940, plaintiff presented his Application for Entry of Default Judgment to the Clerk and demanded that judgment be entered according to the prayer of the Application, at the same time noticed and filed a motion for Leave to Amend the Prayer of the Complaint in order that final judgment may be entered by the Clerk. This said Motion was made returnable July 8, 1940. On this said date H. Collin Minton, Jr., upon finding himself cornered by default judgment against the Utah Fuel Company for which he made the motion, put in his appearance in person without filing any pleading or other proper paper. Here may it please the Court to see the Court's Stenographer Report. (The U. S. Fuel Company was responsible for the conduct of) Plaintiff argued that if Dr. C. F. Jones, local surgeon (See page 106 of Declaration under "Conclusion" pages 107, 108, 109). (See 2nd par. on page 106 of Declaration, Flementis Case Decision) of the United States Fuel Company, then the Utah Fuel Company was responsible for the conduct of Dr. E. R. Murphy, then and now in default of a pleading or other proper paper; this being the law the Utah Fuel Company is in default because a corporation cannot act unless it acts through its officers and agents. At

this point the Court asked to hear the other side. Then H. Collin Minton, Jr., moved and stated to the Court he now says that he is appearing for all of those defendants who are not represented by some other attorney. The plaintiff responded and stated to the Court that the record does not so say. The two made reference to the Special appearance filed by the defendant H. Collin Minton, Jr. Plaintiff responded and stated that the names of the defaulted defendants do not appear on the face of the Special appearance and moved to go to the window and take it out of his case and produce it into the Court.

Then the Court shouted at the plaintiff to the point of being overcomed and stopped plaintiff-appellant half ways and stated that Mr. Minton now says that he is appearing for all those defendants who are not represented by some other attorney and that the district court will be guided by that statement in the future. The pleadings suppressed. Plaintiff-appellant responded and stated to the Court that he takes an Exception to its decision or opinion or ruling. Exception granted.

THE STENOGRAPHIC TRANSCRIPT

See copy of the Praecipe to the Stenographer as annexed to the Transcript. On Hearing of May 6, 1940, on page 5.

In the presence of H. Collin Minton, Jr., and his assistant and adviser both of them on the left hand side of this appellant, appellant stated unto the District Court:

"Three of the defendants are in default, and their defaults have been entered with the Clerk of this Court. These are copies (p. 4) of the defaults that have been entered. I do not believe it is necessary to file them as the originals are on file. (The Stenographer arranged the Transcript. Did not transcribe good parts of the appellant's statements.) There was no objection made on this said motion of the entries of the defaults against three of the defendants in default of appearance. Defendant H. Collin Minton was standing up by this appellant and he is directed what to say

and do by his assistant. There he stated to the Court (p. 2 last sentence and cont. on p. 4), I believe your honor, I am the moving party.

The Court: After due consideration. Answer his Affidavit.

Defendant H. C. Minton's assistant to Minton:

No use arguing this case. He is in default. The case is lost. Defendant Minton: I have no Affidavit. (etc.)

On page 6 defendant H. Collin Minton deliberately endeavors to force the Court to dismiss the action on the grounds that the suit is against the Governor of the State of Utah and other State Officials. The defendants named therein "were" 18 years ago and defendant Minton is in the habit of telling lies.

HEARING ON JUNE 10, 1940, page 2.

At the call of the motion appellant moved up to in front of the Court and its Clerk and there he addressed the Court first of all: The Court please any opposition?

The Court: The Clerk will call any opposition.

The Clerk: (Mr. Jaeckel) Any body here in opposition to the Motion to substitute the Bamberger Coal?

The Clerk: No Answer; No Opposition.

HEARING ON JULY 8, 1940, on page 4.

Defendant Minton, after being face to face with the entry of final judgment, for the first time starts out and recites imaginary stories.

(The rule is: Defendants' failure to enter his appearance, or cause an appearance to be entered for him, is a default which will entitle plaintiff to take judgment. Cyclopedia of Law & Procedure Vol. 23, p. 742, C. 2. Citing: Chiccago, etc., R. Co. v. Bozarth, 91 Ill. App. 88; Carter v. Daizy, 42 Minn. 501; Dubois v. Claub, 52 Pa. St. 238; and many other cases.

On page 5. *Defendant Minton*: I have entered a special appearance for a good many of the parties and so I think the matter should be held in abeyance until your honor rules on the motion originally made six weeks ago.

On page 6, 5th line. *The Court*: All right. How about the Bamberger Coal, do you represent the Bamberger Coal Company?

Defendant Minton: Yes.

(At this point of the argument, the Court have had lost his judicial control and directed the defendant Minton to state falsehood. See the Record. His honor was so overcomed as to stop this appellant from producing defendant's, Minton's, Motion by calling out "Next case." There are now eight (8) defendants in default. See pp. 1 of the Brief here.

* * * *

A party shall plead in response to an amended pleading (etc.) Rule 15 (a).

The rule, that a judgment is conclusive of every fact necessary to uphold it, admits of no exception; and is equally applicable, whether the final adjudication resulted from the most tedious and stubborn litigations, or from a suit in which no obstacle was presented to defeat or delay plaintiff's recovery. Law of Judgments. Freeman Sec. 330 citing several cases. A judgment by default is attended with the same legal consequences as if there had been a verdict for the plaintiff. Same Authority.

In case where no default is entered, the admission made by either of the parties, whether in direct terms or by failure to traverse material allegations when called upon to do so, are as conclusive and as available as a bar, as if they were proved by witnesses.

A default is an admission of every material and traversable allegation of the declaration or complaint necessary to plaintiff's cause of action, (23 Cyc. p. 752, D. 2) Citing cases of many States; that the defendant is the person named in the writ and intended to be sued, (Curtis v. Herrick 14 Cal. 117, 73 Am. Dec. 632) and that the Court has acquired jurisdiction of his person and has jurisdiction of the cause of action, (Teat v. Cooke, 42 Ala. 336; Goldie v. McDonald, 78 Ill. 605; Applegate v. Ruble, 2 A. K. Marsh (Ky.) 128; and

others). Also it admits the due execution of a note, contract, or other instrument sued on, and, where defendant is a corporation, its capacity to make the contract in suit. Starr Cash, etc. Car. Co. v. Starr, 69 Conn. 440, 37 Atl. 1057.

The conspiracy set forth in the complaint and the pleadings thereon is formed to be continuous. If it may continue, being to it during its life as it was to it the moment it was brought into life. If each conspirator was the agent of the others at the latter time, he remains an agent during all of the former time. Mr. Justice McKenna in Hyde v. United States, 225 U. S. and on page 369 proceeds with the Rule: As he started evil forces he must withdraw his support from them or incur the guilt of their continuance. Until he does withdraw there is conscious offending and the principle of the cases cited by defendants is satisfied. Citing: Ex Parte Black, 147 Fed. Rep. 577; United States v. Eccles, 181 Fed. Rep. 906; United States v. Green, 115 Fed. Rep. 343, 350; Ochs v. The People, 25 Ill. App. 379. Please see the case in the Sup. Ct. Rep. and Brown v. Elliot in the same vol.

Now in the case at Bar. If each defendant (conspirator) was the agent of the others at the latter time, and remains an agent during all of the former time, then the default of the eight (8) of them is a conclusive default against all of them, because of their parts of the crime as it is set forth in the complaint.

(STENOGRAPHER'S TRANSCRIPT)

The Court: (Hearing of July 8, 1940). The application for a default judgment, sir, have to wait the court's decision on the motions to strike the complaint."

Answering the Court's said decision or ruling appellant says that his honor abused his discretion in favor of the defendants, because his honor has no authority to suspend the due course of the operation and effect of the law. New Jersey R. S. 1937, 2:27-191; Cumul. Suppl. To C. S. see page above, Harris P; & Pr.; New Jersey R. S. 1937, 2:27-292; C. S. 4094, Sec. 133; S. C. R. (1938) 76; See Sec. 390, Sec.

391. Sec. 391 and citations thereunder; Sec. 582 N. J. R. S. 1937, 2:27-192; C. S. 4094, Sec. 100; Sec. 391; Sec. 599; Kocher & Tryer N. J. Chancery Pr. Sec. 250. See page 20. above; These said laws are not in conflict with the Federal Rules of Civil Procedure for the District Courts of the United States. Act of June 19, 1934, Ch. 651, Sec. 1.

R. S. of Utah 1933, Ch. 28. Judgment by Default. When Authorized . . . When the action is against two or more defendants jointly or severally liable on a contract, and summons is served on one or more but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants. See the R. Statutes; Association of Credit Men v. Bowman, 38 U. 328, 113 P. 63; Franklin v. Thatcher, 53 U. 387, 198 P. 922.

The District Court has no authority to neither bridge, enlarge, nor modify the substantive rights of any litigant; nor has it any jurisdiction, right or authority to suspend the force and effect of the Federal Rules of Civil Procedure for the District Courts of the United States.

United States v. Kissel, 218 U. S. 601, 54 L. Ed. 1168, 31 Sup. Ct. Rep. 124 "Conspiracy might be a continuous crime. We there said, distinguishing a crime from its results:

"But when the plot contemplates bringing to pass a continuous result that will not continue without the continuous co-operation of the conspirators to keep it up, and there is such continuous co-operation, it is a perversion of natural thought and of natural language to call such continuous co-operation a cinematographic series of distinct conspiracies, rather than to call it a single one." These remarks are especially pertinent to the case at bar. It is alleged in the indictment that the conspiracy set forth was designed to be and was continuous; and being so, every overt (401) act * was the act of all the conspirators, made so by the terms and force of their unlawful plot. . . .

Adapting the paragraphs found in the opinions in the cases referred to, it would seem to follow that the Declara-

tion sets forth a single conspiracy; these being so, and every overt act was the act of all the conspirators, made so by the terms and force of their unlawful plot, and eight (8) of the actual-principal defendants (conspirators) being in complete and conclusive default of appearance, their default is a default against all the defendants named in the suit.

The jurisdiction of the Federal Courts over offenses begun in one judicial district and completed in or is continued in another is not "News." (U. S. C. A. Tit. 15, Sec's 1, 2, 5, 15, 22, 26; Tit. 18, Sec's 52, 54, & 88; Tit. 28, Sec's 103, 729, 377) Nevertheless the Federal Court holds on to its reluctance and harbors the lowest conspirators in the United States.

This Honorable Court has held:

"We hold it to be an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent.

This power to enforce its laws and to execute its functions in all places does not derogate from the power of the state to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time. In that case, the words of the Constitution itself show which is to yield.

"This Constitution, and all laws which shall be made in pursuance thereof, . . . shall be the supreme law of the land." . . .

It (the U. S.) must exercise its powers, or it is no government. It must execute them on the land as well as on the sea, on things as well as persons. And to do this it must necessarily have power to command obedience, preserve order, and keep the peace, and no person or power in this land has the right to resist or question its authority so long as it keeps within the bounds of its jurisdiction."

United States v. Fullheart, 47 F. 802, quoting from Re: Subold, 100 U. S. 871, on p. 895.

An Action, authorized by sections 43 and 47 of Title 8 is within federal Court's jurisdiction as based on United States Laws. Mitchell v. Greenough, 100 F. 2d. 184, rehearing denied, 1939, 100 F. 2d. 1006, and Certiorari denied. 1939, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056.

A conspiracy is a partnership in crime, and an overt act of one partner may be the act of all without any new agreement specifically directed to that act. United States v. Socony Vacuum Oil Co. 60 S. Ct. 811, 310 U. S. 150, 84 L. Ed.—

If an agreement has an unlawful purpose, it is a conspiracy. Lynch v. Magnavox Co., 94 F. 2d. 883.

And a civil conspiracy may be defined as a combination of two or more persons to accomplish by concerted action an unlawful or oppressive object. National Fireproofing Co. v. Mason Builders Ass'n 169 F. 259, 94 C. C. 535, 26 L. R. A. (NS) 148.

When a crime is committed partly in one district and partly in another, it must, in order to prevent an absolute failure of justice, be tried in the district, or in that one which the legislature may designate; and Congress has accordingly provided that when any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either district, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (R. S. Sec. 731; Mar. 3, 1911, c. 231, Sec. 42 Stat. 1100; Encyc. of U. S. Sup. Ct. Venue. Vol. 11, p. 916; Putnam vs. United States 162 U. S. 687, 4 L. Ed. 1118; Horner vs. United States, 143 U. S. 207, 214, 36 L. Ed. 126; Benson vs. Henkel, 198 U. S. 1, 49 L. Ed. 919; Hyde vs. Shine, 199 U. S. 62, 76 et seq., 25 S. Ct. 760, 5 L. Ed. 90; Armour Packing Co., vs. United States, 209 U. S. 56; Brown vs. Elliott, p. 392; U. S. vs. Kissel, 218 U. S. 601.

The words "offenses against the United States" (See the Sec's cited on page 28 supra) in this section have the same meaning as the words "offenses against the laws of the United States" in the original Act of March 2, 1867 (14 Stat. 484, c. 169). Thomas v. United States, 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

The words "any offense against the United States" in the section (103 U. S. C. A. 28) have been construed to include any offense made a crime by the laws of the United States. Radin v. U. S. 189 Fed. 568, 111 C. C. A. 6; United States v. Kissell, 31 S. Ct. 124, 124, 218 U. S. 606, 54 L. Ed. 118.

There may be a constructive presence in a State, distinct from personal presence, by which a crime committed in another State may be consummated, and render the person consummating it punishable at that place. Hyde vs. United States, 225 U. S. p. 347; State v. Rodosta 138 So. 124, 126, 173 La. 623: It may be a constructive presence, Mitchell v. Commonwealth, 33 Grat. 845, 868; Grimsinger v. State, 60 S. W. 583, 87, 44 Tex. Cr. R. 1; State v. Town (Ohio) Wright. 75, 76.

It is settled that there may be a constructive presence in a State, distinct from a personal presence, by which a crime committed in another state "may be consummated and so be punishable there. Grayson v. United States, 272 F. on p. 557 (8); Citing: In re Palliser, 136 U. S. 257, 267, 10 S. Ct. 1034, 34 L. Ed. 514; Horner v. United States, 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126; Burton v. U. S., 202 U. S. 344; 381, et seq., 26 Sup. Ct. 688, 50 L. Ed. 1057, 6 Ann. Cas. 392; Hyde v. United States, 225 U. S. 347; Lamar v. United States, 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526.

The offenses denounced by the Criminal Statutes of the United States is not confined to such acts as injure the United States, but apply as well to all conspiracies that affect private rights or interests where they are under the protection of the criminal laws of the United States, as to the

right and interests of the government itself. (8 Cyc.) p. 628, 5; U. S. v. Sanch, 7 Fed. 715.

The defendant Utah Fuel Company is a powerful corporation and owns entire capital stock of (a) Calumet Fuel Co.; (b) Wasatch Store Co.; (c) Castle Gate Coal, Coke & Fuel Co.; (d) Bamberger Coal Co., and (e) Utah Grazing Lands Co,; See pp. 3-4 of Declaration. It further appears from the Decision of the Industrial Commission of Utah (See page 103 of Declaration) in the Flementis case that it is one and the same corporation with the (f) United States Fuel Company and if that be true the Unit control almost the entire coal fields in Carbon County, State of Utah where the cause first begun. The Unit maintained as effective a "trust" as can be found in any part of the United States. The defendant Utah Fuel Company is a New Jersey Corporation and maintains its Headquarters in Jersey City, New Jersey, right next to the city limits of the city of Newark, N. J. wherein the Federal Court is located. From its Headquarters in Jersey City, N. J. operates the conspiracy within the Federal Court in open Court and without, (Please See the Record.; Par. 17, Point k of Affidavit in Opposition to the Motion or Demurrer; page of Record of Pleadings; pp. 33-34 of Declaration, thereby ruined this appellant, forced martyric sufferings upon him, and caused him to be driven out of the District of New Jersey; and it still is at it.

Transacting Business.—Clayton Anti Trust Act, Oct. 15, 1914, construed with respect to the districts in which suits against corporations for its violation may be brought. Frey & Son v. Cudahy Packing Co., 228 Fed. 209.

The meaning of the phrase "to carry on" when applied to business, is well settled. In Webster's Dictionary the definition is "to prosecute; to help forward; to continue; as to carry on business, etc. Florsheim Bros. Dry Goods Co. v. Lester, 29 S. W. 34, 35, 60 Ark. 120, 27 L. R. A. 505, 46 Am. St. Rep. 162 (citing) Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 5 Sup. Ct. 739, 28 L. Ed. 1137.

A conspiracy to corruptly obstruct and impede the due administration of justice in a court of the United States in a civil action between private parties in violation of R. S. Sec. 5399 (embodied in Section 241 of Tit. 18) is a conpiracy to commit an offense against the United States within the meaning of R. S. Sec. 5450. Wilder v. United States, 143 F. 433, 74 C. C. A. 567, Writ of Certiorary denied 27 S. Ct. 787, 204 U. S. 674, 51 L. Ed. 674.

In suits under section 7 of the Sherman Anti Trust Act (15 U. S. C. A. Sec. 15. note), the word "found" came to mean "doing a business" to a substantial extent. Knox, J. in re Hansen Packing Co. v. Armour & Company, 16 F. Supp. 784. Citing: Peoples Tobacco Co. v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 587, Ann. Cas. 1918 C. 537; Katz Drug Company v. Shaeffer Pen Company, 6 F. Supp. 210.

This (15 U. S. C. A. Sec. 22) is a venue statute which enables a complainant to file his suit in any district wherein the defendant may be found or where it "transacts business." Upon the theory it was transacting business within the district, this suit was filed. The evidence tend to show that the defendant had a salesman whose business it was to solicit orders and then forward same to its place of business at Fort Madison for acceptance or confirmation. It could hardly be denied that to obtain an order was the transaction of business.

It appeared that defendant's agent devoted all of his time as salesman within the territory comprehended within the Judicial District and certain additional territory. . . .

Under such circumstances the venue would be fixed here. Jeffrey-Nichols Motor Co. v. Hupp. Motor Car Corp., 46 F. 2d. 623; Eastman Kodak Co. v. Southern Photo Materials Co. 273 U. S. 359, 47 S. Ct. 400, 71 L. Ed. 684. (From the Katz Drug Case supra.)

(4) 3. Said statute, however, provides that all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be "found." In this case it

is unquestionable that the Utah Fuel Company and the Bamberger Coal Company defendants in the present suit are found and transacting business within the District of New Jersey. So are the individual co-conspirator-defendants constructively doing business within the District of New Jersey and are unquestionable found at Salt Lake City, Utah, Provo, City, Utah, Springville, Utah and Washington, D. C. (103 U. S. C. A. 28) See also Williamson v. Columbia Gas & Electric Corp. 27 F. Sup. 198. (4-6); Glen Coal Co. v. Dickinson Fuel Co. 72 F. 2d. 885. The Williamson case is from the C. C. A. Third C.; General Investment Co. v. Lake Shore & M. S. Ry. Co. 260 U. S. 261, 279, 43 S. Ct. 106, 67 L. Ed. 244; Minnesota v. Northern Securities Co., 194 U. S. 48, 71, 24 S. Ct. 594, 48 L. Ed. 870; Wilder Mfg. Co. v. Corn Products Rfg. Co. 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520; Pain Lumber Co. v. Neal, 244 U. S. 459, 471, 37 S. Ct. 718, 61 L. Ed. 1256; Gedes v. Anaconda Mining Co. 254 U. S. 590, 593, 41 S. Ct. 209, 95 L. Ed. 425, (18).

Acts and declarations of one as evidence against the others. See pp. 33-34 pp. 30-31-32; page 29 of Declaration; Par. 17, Point k of Opposing Affidavit, pp. 12-37½, Record of Pleadings. In case of conspiracy when once the conspiracy or combination is established, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all. Each is deemed to consent to, or command, what is done by any other, in furtherance of the common object. American Fur Co. vs. United States, 2 Reb. 358, 365, 7 L. Ed. 450; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; United States vs. Gooding, 12 Wheat. 460, 469, 6 L. Ed. 693; Logan vs. United States 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. United States, 166 U. S. 464, 469, 39 L. Ed. 494; Clune vs. U. S. 159 U. S. 590, 593, 4 L. Ed. 260; Connecticut Mut. Life Ins. Co. vs. Hullmon 188 U. S. 208, 218, 47 L. Ed. 446; Lincoln vs. Claflin, 7 Wall. 132, 19 L. Ed.

Prearrangement is not essential to a recover against one of several conspirators. It is sufficient to show that he subsequently, with knowledge of the conspiracy became a par-

ty to it. His subsequent participation in the conspiracy and its fruits is as effective to charge him as if he had been a party to it originally. Lincoln vs. Claflin, 7 Wall. 132, 19 L. Ed. 106.

The defendants, Dr. E. R. Murphy, Dr. Robert S. Allison, and Dr. Francis S. Bascom, were elective officers (R. S. of Ut. 42-1-57) of the defendant Utah Fuel Company; and it was their willful misconduct (R. S. of Ut. 42-1-57) that caused the damages to this appellant; and their such acts clearly show a willful disregard (R. S. 42-1-57) of the life of this appellant and his brother. It were they who forced this appellant to act as a nurse for forty days at Clear Creek, Utah. It were they who forced appellant to take his brother out of his home and with his own moneys transport him to them at Salt Lake City, Utah. It were they who left the patient in the basement of the hospital for about ten days without any treatment of any kind and under hungry bases. It were they who put the patient out of the hospital as an incurable. And it were they who told this appellant that there was not a thing in the world they could do for the patient but that he was going to die right there in the porch of the hospital.

The Act (R. S. of Ut. 42-1-57) provide that such injured employee—"or other person damaged—" may, at his option, either claim compensation under this title or maintain an action at law for damages. See pp. 48-49 of the Declaration. It follows, therefore, that the law suit as filed in the Federal Court for the District of Utah, as well as the present suit, was not falsely and maliciously moved or maintained by the petitioner.

A vested right of action is property in the same sense in which tangible things are property and is equally protected against arbitrary interference; 2 Cooley's Constitutional Limitations (8th Ed.), p. 756, and cases cited in the footnote. To hold otherwise would be depriving the applicant of property without due process of law. Supreme Court of the State of Utah in re: Buckingham Transporta-

tion Co. v. Industrial Commission of Utah. Oct. 25, 1937, 73 P. 2d. 1077. See pp. 51-52 of Declaration.

It further follows that the conduct of the defendants throughout the last twenty-three years is wanton and criminal per se. As to the character and conduct of the defendant Utah Fuel Company please take a look at the cases cited and annexed to the Declaration. It is unworthy of belief.

The District Court of the United States for the District of New Jersey; as to this petitioner, has so far departed from the accepted and usual course of judicial proceedings as to oblige this appellant to call on the Circuit Court of Appeals Third Circuit to exercise that court's power of supervision and in the month of (See case No. 6468 C. C. A. 2nd C.) he did so by proper Petition praying that an unbiased and impartial justice be designated and assigned to take up the matter and proceed to deal with, hear, try and determine the cause and punish offenders against Federal Law. The Circuit Court of Appeals changed appellant's Petition to an appeal and proceeded and dismissed the suit leaving appellant's Motion to set aside the decree dismissing the suit pending and the same is thus pending and undisposed. Thus it have had decided an important question of local or State law in a way probably in conflict applicable local or State Decisions on the same matter. For citation in support of the Statement please see those on pp. 49-50-51-52-53-54-55-56-57-58 and on to 108.

In the present suit on the 21st day of August, 1940, appellant or petitioner has appealed to the United States Circuit Court of Appeals Third Circuit praying that that court review the conduct and rulings of the District Judge. See 1st part of the Brief. See also petitioner's Petition for Writ of Certiorari. And thereupon said appeal the United States Circuit Court of Appeals for the Third Circuit handed down its final decision dismissing petitioner's appeal without any findings and conclusions. The decision so rendered is in conflict with the decisions of every other Circuit Court of Appeals, particularly the cases of Clifton v. Tombs, 21 F.

2d. (3-4* on p. 897, Austin v. Riley, 55 Fed. 833, 837; O'Brien v. Lasher, 273 Fed. 520, (C. C. A. 2); Interstate Commerce Com'n v. Daley, D. C. Dist. of Mass. Federal Housing Administration v. Jackson et al 25 F. Supp. 79. D. Ct.; It has decided important questions of local law, Federal Practice, and Rules of Civil Procedure in a way probably in conflict with the weight of authorities. See "Authorities" pp. 14-26 supra. It has decided Federal Questions of practice and procedure in a way probable in conflict with applicable decisions of this Court. Thompson vs. Wooster and Central R. R. Co. v. Central Trust Co., Frow Dela Vega, p. 1162; Atchison, Topeka & Santa Fe R. Co. v. Wells, p. 14; Hefner v. North Western Mut. Life Ins. Co., p. 14; Rose Collester, Appt. v. Inter State Fidelity (etc.), p. 14, Sup. Ct. of Arizona; Last Chance Mining Co. et al. v. Tyler Min. Co., p. 14; It has decided important questions of local (New Jersey) law in a way probable in conflict with applicable local decisions, See New Jersey Practice pp. 14-26 supra; It has decided a federal question in conflict with applicable decision of this Honorable Court. McCleland v. Garland, 217 U. S. 268; in which case this Honorable Court says:

That the Federal Courts cannot abandon their jurisdiction already properly obtained of a suit. That the Courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. Snydam v. Broadnax, 14 Pet. 67; Union Bank v. Jolly's Administrators, 18 How 503. That where a case is made upon a bill which is within the jurisdiction of the Court of the United States the court is bound to maintain such action and proceed to trial. That the law should and ought to be enforced as against all. The existence of the Jurisdiction creates an implication of duty to exercise it. That the judges of the United States shall be bound by the Constitution of the United States and the Acts of Congress of the United States and the Judicial Authority shall be exercised pursuant to the provisions of

the Constitution of the United States, the Acts of Congress of the United States and the Common Law.

By its Memorandum Decision the Circuit Court of the United States for the Third Circuit simple devests itself of jurisdiction it does poses and for this simple reason its decision is utterly null and void. Floyt et al. v. Sixth Judicial District, Sup. Ct. of Nevada, A. L. R. A. vol. 4 p. 655; McClelland v. Garland, and Snydam v. Broadnax, supra.

The default of the defendant Dr. E. R. Murphy constitutes an admission to the effect that (a) He is the person named in the writ and Declaration and intended to be sued; (b) and that the Court has acquired jurisdiction of his person and has jurisdiction of the cause of action. Curtis v. Utah Fuel Company, et als. No. 5547 U. S. Dist. Ct. of Utah. Citing Cambel vs. Duluth Etc. C., 50 Fed. 241; (23 Cyc.) p. 752 Citing: Hunt v. San Francisco, 11 Cal. 250; McGretor v. Shaw, 11 Cal. 47; Rowe v. Table Mountain Water Co., 10 Cal. 441; Harlan v. Smith, 6 Cal. 173; Schueler v. Mueler, 193 Ill. 402; 61 N. E. 1044; Garrison v. People, 21 Ill. 535; Cook v. Skelton, 20 Ill. 197, 71 Am. Dec. 250; Phoenix Ins. Co. v. Hedrick, 73 Ill. App. 601; Smith v. Carley, 8 Ind. 451; Phantz v. Culuer, 13 Iowa 312; Grinnel v. Bebb, 126 Mich. 157; McCutchin v. Batterton, 1 Mo. 342; Bullard v. Sherwood, 85 N. Y. 253; McMullin v. Mackey, 6 N. Y. Supp. 885; McLeod v. Nimocks, 123 N. C. 437; Moore v. Johnson, 12 Tex. Civ. App. 694; McCallon v. Waterman, 15 Fed. Case No. 8, 675, 1 Flipp. 651. (c) the due execution of the contract to furnish medical and surgical services and operation, hospitalization, medicines and all necessities; (Sec. 42-1-50, set out on pp. 47-48 of Declaration; (d) the authority and capacity of the Utah Fuel Company to make the contract with its employees; (e) that he was an Elective Officer (42-1-57) (Vice Principal, 49-6-1 R. S. of Ut.) of the defendant Utah Fuel Company and associated companies and in complete charge and control of its or their medical System and local hospital with the duty of controlling and conducting the transactions and property of the Utah Fuel

Company. (f) That he had general supervision of the affairs pertaining to the medical system and its local hospital thereof with powers and authority to furnish prompt medical attention, hospitalization, operation, etc. as he generally did with all the other employees; (g) that he took appellant out of his regular employment on the railroad washout construction and made him use his home as hospital and himself as man nurse; (h) that he falsely practiced medicine on the brother of the appellant with castor oil capsules for a period of 40 days at Clear Creek, Utah; (l) and that his Associates have had his said patient removed from Clear Creek, Utah to Salt Lake City, Utah to them in the defendant's general hospital, and that the patient so taken there did not receive the benefits contemplated by his contract but that he was taken to private hospital and put under the care of private doctors. It follows that there is nothing left to be decided on the Utah Fuel Company's and defendant's Minton's Demurrer by the District Judge. Federal Rules of Civil Procedure. Rule 1; Rule 7 (a) and (c); Rule 12 (b), (c), (e). See pp. 7-12 of Record of Pleadings.

Sup. Ct. Encyc. IX Liability of Corporation for Acts of Agents and Rights Thereunder. As to corporations necessarily act by agents, a corporation is liable for the acts of its servant, to the same extent that individuals are liable under like circumstances. 21. Orleans vs. Platt, 99 U. S. 576, 682, 25 L. Ed. 404; Philadelphia, etc. R. Co. vs. Quigley 21 How. 202, 209, 16 L. Ed. 73; Baldwin 73; Baldwin vs. Bank, 1 Wall. 234, 240, 17 L. Ed. 534; Railroad Co. vs. Howard, 7 Wall. 392, 413, 19 L. Ed. 117.

The officers of a corporation are held out to the public as having authority to act according to the general usage, practice and course of their business, would, in general, bind the corporation in favor of third persons possessing no other knowledge. Minor v. Mechanic Bank, 1 Pet. 46, 7 L. Ed. 47.

The acts of a single duly authorized agent of a corporation, bind the corporation although he keeps no minutes of

such acts. (In the present case the minutes of the nature of the sickness or injury, history etc. were taken down in the Records of the defendant company.) They may be, and they are, daily proved. United States Bank vs. Dandridge, 12 Wheat. 64, 83, 6 L. Ed. 552.

VI. A. 5. Ratification and Estoppel to Deny Authority.—And it is settled law that the existence of the requisite authority in subordinate officers may, in the absence of express statutory prohibition, be shown otherwise than by the official record of the proceedings of the board. It may be established by proof of the course of business between the parties themselves; by the usages and practice which the company may have permitted to grow up in its business; AND BY THE KNOWLEDGE WHICH THE BOARD CHARGED WITH THE DUTY OF controlling and conducting the transaction and property of the corporation, had, or must be presumed to have had, of the acts and doings of its subordinates in and about the affairs of the corporation. Mining Co. vs. Anglo-California Bank, 104 U. S. 192, 194, 26 L. Ed. 707.

Where the officer was held out to the world as competent to do what he did, and it was done in conformity to the established usages of the company in all such cases, under such circumstances, the institution cannot be permitted to deny that he had all such powers as he habitually exercised, and thus assumed to have. Cresswell vs. Lanahan, 101 U. S. 346, 341, 25 L. Ed. 853; Merchants Bank vs. State Bank, 10 Wall. 604, 19 L. Ed. 1008; Hubard vs. Todd,, 171 U. S. 474, 496, 43 L. Ed. 246; Putnam vs. United States, 162 U. S. 687, 731, 40 L. Ed. 1118.

The United States District Court for the District of New Jersey has jurisdiction to grant relief against all the defendants in the suit. American Digest. 2d Decenial Ed. Courts, 6 U. S. CC. A. N. J. 1908. It is said there:

A corporation was organized under the laws of New Jersey for the purpose of exporting oil for sale in foreign

countries. Its manager, who was a dealer in Hamburg, Germany, was given a power of attorney conferring on him full authority to act for the company in all matters and which in effect vested in him all of its powers in respect to its business. He continued the business in Hamburg in the name of the company, which purchased oils from a refinery in this country and had the same shipped in its name to Hamburg to itself as consignee, from which point they were distributed. By its directions barrels were shipped unmarked, except for an identifying mark, and on their receipt at Hamburg, etc. Held, IN A SUIT AGAINST THE COMPANY, ITS MANAGER, AND CERTAIN OF ITS OFFICERS. THAT SUCH ACTS OF FRAUD AND UNFAIR COMPETITION WERE NOT COMMITTED SOLELY IN A FOREIGN COUNTRY (State), but had their inception and were in part performed in this Country (in the State of New Jersey), whence the barrels were purposely sent without marks, and that a court of the United States had jurisdiction to grant relief against the same.—(C. C. 1907) Vacuum Oil Co. v. Eagle Oil Co. of New York, 154 F. 867, decree affirmed. Eagle Oil Co. of New York v. Vacuum Oil Co., 162 F. 671, 89 C. C. A. 463, certiorari denied. 29 S. Ct. 696, 214 U. S. 515, 53 L. Ed. 1063. It follows that for offenses committed, partly, within the Territorial Limits of the District Court of the United States for the District of New Jersey, there is no Territorial, State or National, Limits on the court's jurisdiction. Its jurisdiction reaches throughout the United States as well as throughout every Nation on the face of the earth.

The declaration alleges that wrongs done to this plaintiff-petitioner of which he complains were made and participated in by all the defendants in the Districts of Utah, Columbia, New Jersey, New York, and others, a good part of which were done in the District of New Jersey. See the Petition for the Writ of Certiorari and the Record of the case thereto.

The Statutes on which the plaintiff relies provide: (1)

This case may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offenses had been actually and wholly committed therein. These would mean that the plaintiff was obliged (Curtis vs. Utah Fuel Co. et als. D. Ct. of U. S. Dist. of Ut. Law 5547) to sue in the Federal Court for the District of New Jersey and to deal with his case in the same manner as if the offenses had been actually and wholly committed therein in the District of New Jersey. (Sec. 103, Tit. 28, U. S. C. A. (Webster's New Inter Dictionary. Deal p. 675. 10. deal with or by: To handle or treat so as to dispose of or manage adequately; as, to deal with a problem (a case is a problem) (17 C. J.) p. 1157. Dealt with: Where a consequence follows on an alleged offense being "dealt with," by a competent tribunal; that provision does not only apply when there has been a conviction, it equally applies if the charge is dismissed. Stroud Jud. D. (cit. Ex. p. Brown, 37 Sol. J. 27.); (A New English Dictionary on Historical Principles, Vol. D. & E. Deal. p. 67. 16. To deal with; to act in regard to, administer, handle, dispose in any way of (a thing; b: to handle effectively; to grapple with; to take successful action in regard to.)

Deal as a verb. (17 C. J.) p. 1153. Citing Wilson v. Delaney, 137 Iowa 636, 638; 113 N. W. 842; on p. 1154.—to have to do with 61. Citing: Montgomery Branch Bank v. Knox 1 Ala. 148, 151; 11 A. L. R. p. 662, cases quoted in the page.

(2) Title 15, U. S. C. A. Sections 1 to 7, 15, 22, and 26, Under these statutes if the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, "whether they reside in the district in which the court is held or not; and summons to that end may be served in any district by the marshal thereof, Sec's 5, 15, 22, 26. See also Federal Rule 4, (d), (e) (f) of the Federal Rules of Civil Procedure of the District Courts of the United States.

The District Court of the United States for the District

of New Jersey has jurisdiction of the cause and over the defendants. By virtue of the provisions of the Acts quoted above, the plaintiff had the right to resort to this said venue and proceed according to the Provisions of the Federal Rules of Civil Procedure. See COHEN V. SADDLEMIRE, 26 Fed. Supp. 27.

By the use of all means thei rwealth can buy, the defendants have established racial, religious, and nationality prejudice to cover their conduct and infernal acts, and the same are in use and operation throughout the country and in other parts of the world particularly in Greece. The plaintiff's cause is before the United States District Court for the District of New Jersey ever since the year 1927 and it refuses to proceed and deal with it, inquire of it, try it, determine it, and punish the defendants thereby putting an end to this said conspiracy; and very improperly and unjustly departed from the accepted and usual course of judicial proceedings and has allowed a crime wave to be operated within its Territorial Jurisdiction as well as in its presence and permit mob tactics to be practiced before it. See the Record and the Stenographic Transcript, particularly the untranscribed part of the argument of the defendant William v. Rosenkrans. See the Stenographer's Job. Port Authorities in the Record. And "I am going to give it to him." (Not in the Record)

SUMMATION

a. Appellant in this suit, Nicholas J. Curtis, filed this his suit in the District Court of the United States for the District of New Jersey, on or about the 22nd day of March, 1940, against the defendants Utah Fuel Company, et als. The defendants were duly served by the U. S. Marshals for their respective Districts.

b. The defendants, Utah Fuel Company and H. Collin Minton, Jr., issued a Motion to Strike (See pp. 2-5 typed Record). This said Motion to Strike begins thus:

TO NICHOLAS J. CURTIS, PLAINTIFF.

PLEASE TAKE NOTICE that on behalf of the Utah Fuel Company and H. Collin Minton, Jr., we shall apply to the Honorable Phillip Forman . . . for an order striking out the complaint, . . . (closing) we will move for an order striking the said complaint and all the counts therein. p. 5 . . . (Signed) Minton & Rogers

Attorneys for defendants
The Utah Fuel Company
and H. Collin Minton, Jr.

c. On the back of the said Motion's blue cover the said Minton & Rogers added thus: (See page 6 typed Record) (Title of Ct. etc.)

SPECIAL APPEARANCE & NOTICE.

TO NICHOLAS J. CURTIS:—

TAKE NOTICE That I hereby enter a Special Appearance on behalf of the defendants Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe, (Charles R. Mabey), and W. D. Sutton, and that on Friday . . . I will move to quash service of the subpoenas made upon the above named defendants.

Respectfully,
Minton & Rogers
Attys. for above named
Def's by special appearance.

d. The said Motion and Special Appearance left out all the other defendants.

e. Addison P. Rosenkranz filed a similar motion in behalf of Nicholas J. Pappas, Helen N. Pappas, William V. Rosenkranz and Harry Sussman, all Paterson, N. J. Motion in the Record. Decision Reserved.

f. Carol C. Johnson, New York City, filed a similar Motion but failed to appear although his motion was carried over from hearing to hearing. Decision Reserved.

g. Defendant Dr. E. R. Murphy was served by the U. S. Marshal for the Dist. of Utah on April 8, 1940, and the defendant Charles W. Kutz therebefore. No Appearance. In the year 1928, appellant returned to Salt Lake City, Utah, and made inquiry for Dr. E. R. Murphy and was advised that Dr. E. R. Murphy was not any longer in the employ of the defendant Utah Fuel Company but was practicing medicine in Salt Lake City, Utah. Default. Appellant filed Praecipe for Entry of Default for failure to appear against Dr. E. R. Murphy and Charles W. Kutz on May 2, 1940. See page 23 typed Record. No Objection made to the Entry of the Default. It stands good.

h. The defendant Mark Tuttle was served April 9, 1940. No Appearance. Default. Appellant mailed Praecipe for Entry of Default against Mark Tuttle May 4, 1940. See page 34.

i. The Motion and Special Appearance of the Utah Fuel Company and H. Collin Minton, Jr., came on to be heard and argued on the 6th day of May, 1940. See paragraphs 7, 8, & 9 on pages 52-53 typed Record.

j. The U. S. Marshal for the Dist. of Utah returned as to Dr. Arthur Taylor and Dr. J. C. Paul "unknown." Defendants were located by appellant and their true names obtained. See pages 35-37 of typed Record. The Clerk of the Dist. Court issued summons against said doctors on May 16, 1940. See page 38 typed Record.

k. On May 17, 1940, appellant mailed to the Clerk a Motion to Substitute the Bamberger Coal Company and a copy to the U. S. Marshal for the Dist. of Utah for service. See pp. 39-47 typed Record.

l. The U. S. Marshal for the Dist. of Utah returned served Dr. Leslie J. Paul on May 22, 1940; Bamberger Coal Company on May 22, 1940; Dr. Frederick Taylor May 24, 1940. See page 49 typed Record. No Appearance. No pleading or other paper filed. Default.

m. Appellant's Motion to Substitute the Bamberger Coal Company came on to be heard and argued before Judge

Thomas Glynn Walker on June 10, 1940. No Appearance in Opposition. Appellant requested Mr. Charles Jaekel, the Deputy Clerk then present, to call out if there was any one there appearing in opposition. He did several times. No Answer. No Appearance. Default in open Court on regular Motion Day Calendar.

n. On the 17th day of June, 1940, appellant mailed to the Clerk Praecipe for Default or for Entry of Default against the defendants Dr. Fred. W. Taylor, Dr. Leslie J. Paul, and Bamberger Coal Company. See page 50 typed Record.

o. On July 1st, 1940, appellant presented to the Clerk his Application for entry of default judgment. See pp. 51-56 typed Record. On the same date appellant filed a motion for leave to Amend the Prayer of the Declaration (See pp. 61-62) in order that the default judgment may be entered for the full amount due. Motion returnable July 8, 1940.

p. Plaintiff-appellant appeals from the District Court's ruling or Opinion enjoining him from enforcing his rights to the Entries of Defaults against the parties in default for failure to appear.

q. The defendant Utah Fuel Company, through Minton & Rogers its co-defendants and attorneys, applies its strong arm on the District Court in defense of all its co-conspirators and enjoins the plaintiff-appellant from enforcing their defaults of appearances against them, and after the entries of defaults have been duly entered and on file and of Record for 63 days for Dr. E. R. Murphy and Charles W. Kutz; 62 days for Mark Tuttle; 17 days for Dr. Leslie J. Paul and Bamberger Coal Company; and 15 days for Dr. Frederick W. Taylor it stands up before the District Court and tells it "No," I now say that I appear for them all. Thus it takes the Wolf's Share of Justice.

r. Because of these said facts the plaintiff-appellant is constrained to charge the District Court with abuse of discretion and for having granted favors to the defendants. Favors which are not warranted by the pleadings of the

parties plaintiff and defendants; nor are they authorized by the Federal Rules of Civil Procedure for the District Courts of the United States. Under the said rules the District Court and the Defendants cannot any longer get together and dismiss a just cause of action. The Rules are to be construed to secure the just, speedy, and inexpensive determination of every action. The Demurrant cannot any longer reap favors on his might and nonsense.

s. It is error for the District Court in not affording to a plaintiff the rights to take Depositions of parties and witnesses as provided by the Federal Rules of Civil Procedure, Ch. V. Rules 26-37, which provide every opportunity to solve every existing crime. Appellant offered to advance the costs for taking them and return them into the Clerk's Office.

t. It is error for the District Court to take and withhold the poor plaintiff's Applications to take Depositions and thereby ruin him waiting and trips to and from the District Court for nothing.

u. It is error for the Court to step in and take away from the Clerk an Application for Default Judgment which has been properly presented to him in accordance with the provisions of Rule 55 (b) (1); Rule 77 (a). District Court always open for the purpose of filing any pleading or other proper paper; Rule 77 (c). All motions and Applications in the Clerk's office . . . for entering defaults or judgments by defaults, and for other proceedings which do not require allowance or order of the court are grantable of course by the Clerk.

v. It is error for the District Court to suppress its official Docket Entries of Pleadings of the plaintiff and defendants and the District Court's Own Proceedings (Federal Rule 79 (a); U. S. C. Title 28, Sec. 568) and in the place of the Court's Docket Entries and Proceedings take the falsehood of a lawyer who hired himself to a powerful corporation to practice falsehood and corruption to defeat the ends of jus-

tice and the due course of the administration of the laws.

w. Since a party in default for failure to appear has lost his standing in court and cannot be heard, it is error for the District Court to hear oral falsehood of a lawyer who is a defendant or a co-defendant in the suit.

x. It is error for the District Court to enjoin a poor plaintiff from showing, by the defendants' own pleadings, that their lawyer then was lying to the District Court.

y. It is error for the District Court to delay and hold out and neglect to give full faith and credit to the acts of the legislature of the State of Utah.

z. It is Error for the District Court to delay its proceedings and delay the giving of full faith and credit to the Records and Judicial Proceedings of the Courts of the State of Utah and the Industrial Commission, consisting of Three Commissioners, of the State of Utah.

And Last, it is Error for the District Court to refuse to give full faith and credit to its own writings and Records made in the Regular Course of its Business (June 20, 1940, c. 640, Sec. 1, 49 Stat. 1561.

UNITED STATES CODE ANNO.

Tit. 28, Sec. 687. *Authentication of legislative acts; proof of judicial proceedings of States.*

The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the Courts of any State or Territory, or any such country, shall be proved or admitted in any other Court within the United States, by the attestation of the Clerk, and the seal of the Court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form.

And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in

every Court within the United States as they have by law or usage in the Courts of the State from which they are taken. (R. S. Sec. 905; Act Mar. 27, 1804, c. 56, Sec. 2, 2 Stat. 299.

U. S. C., Tit. 28, Ch. 19—*Evidence.* Sec. 695. *Writings and Records Made in Regular Course of Business.*

In any Court of the United States and in any Court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction or occurrences, or event, if it shall appear that it was the regular course of such business to make such memorandum or record at the time such act, transaction, occurrences or event or within a reasonable time thereafter. . . .

The term "business" shall include business, profession, occupation, and calling of every kind. (June 20, 1936, C. 640, Sec. 1, 49 Stat. 1561.)

U. S. C. A. Tit. 28, Sec. 688. *Proofs of records in offices not pertaining to Courts.*

All records and exemplifications of books which may be kept in any public office of any State or Territory, . . . not appertaining to a Court, shall be proved or admitted in any Court or office in any other State or Territory, . . . by the attestation of the keeper of the said records or book, and the seal of his office annexed, . . . or keeper of the great seal of the State, or Territory or country, that the said attestation is in due form, and by the proper officer. . . . And that the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every Court and office within the United States as they have by law or usage in the Courts or offices of the State, Territory, or country as aforesaid, from which they are taken. (R. S. Sec. 906.)

It is finally insisted by this plaintiff-petitioner that the defendants were legally and properly served; that the defaults so entered and in force for so long have been entered legally, as of course, and as a matter of right, and that the

United States District Court for the District of New Jersey very improperly enjoined the plaintiff-petitioner from enforcing the same against the parties in default for their failure to appear; that the District Court very improperly deprived the plaintiff-petitioner of his lawful rights to his pleadings; and that the Circuit Court of the United States very improperly sanctions the conduct of the District Court thus depriving this petitioner of his Constitutional and Statutory rights and leaves him without any remedy in law against the unlawful conducts of the conspirators.

WHEREFORE, your petitioner respectfully prays that the decree of the United States Circuit Court of Appeals Third Circuit be reversed by this Honorable Court, and your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Respectfully submitted this .... day of ....., 1941

NICHOLAS J. CURTIS, LL.B.
Petitioner Appearing in Person,
Temporary Address: No. 106 Mansion Street,
Poughkeepsie, New York.

Statement of Points on which Petitioner intends to rely. The same as those to The Circuit Court. See page 30, 31, and 32 of Brief; And in addition thereto those set forth in the Summation beginning on page 23 and cont. to page 29.

Respectfully,

NICHOLAS J. CURTIS, LL.B.
Petitioner Appearing in Person,

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
THIRD CIRCUIT.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
vs.
UTAH FUEL COMPANY, ET ALS,
Defendant-Appellees.

Statement of the Points on which Appellant Intends to Rely and of the Parts of the Record which Appellant Thinks necessary for the consideration thereof.

The appellant intends to rely upon the contention that the District Court erred:

1. In not peremptorily denying the defendants Motion (demurrer) and Special Appearance to dismiss the declaration.

2. In not denying defendants' Motion (Demurrer) and Special Appearance as prayed in plaintiff's Opposing Affidavit.

3. In not acting upon the plaintiff's Opposing Affidavit Opposing the defendants' Motion to Dismiss the Complaint and Special Appearance thereto.

4. In not acting upon plaintiff-appellant's Application for Commission to Take Depositions and Examine Witnesses residing out of the United States and in the Kingdom of Greece.

5. In not acting upon plaintiff-appellant's Motion and Application for Commission to Take the Depositions and Examine Parties and Witnesses residing out of State and in the State of Utah at Salt Lake City, Utah.

6. In not acting upon plaintiff-appellant's Motion and Application to take Depositions and Examine Parties and Witnesses residing out of State and in Utah County, Provo, Utah.

7. In not acting upon plaintiff-appellant's Motion and Application for Commission to take Depositions of witnesses residing at Price, Carbon County, State of Utah.

8. In taking plaintiff-appellant's Application for Default Judgment away from the Clerk of the District Court to whom it was made.

9. In demanding of the plaintiff his copy of the said Application for entry of default judgment made to the Clerk of the District Court in order to go by with and enjoin appellant from enforcing his said Application.

10. In enjoining plaintiff-appellant from requiring of the Clerk of the District Court the entry of default judgment against the defaulted defendants.

11. In enjoining the plaintiff-appellant from enforcing his rights to the entries of defaults against seven of the parties defendants-appellees.

12. In holding that it will make the statement made by H. Collin Minton, Jr., in open Court on July 8th, 1940, that he then on that date was appearing for all of those defendants who are not represented by some other attorney.

13. In refusing to give full force and effect to the Federal Rules of Civil Procedure for the District Courts of the United States, Adopted by the Supreme Court of the United States Pursuant to the Act of June 19, 1934, Ch. 651.

14. In refusing to give full faith and credit as evidence of the Docket Entries of the Record; and of the record of the case itself.

15. In refusing to give full faith and credit to the Public Acts of the Legislature of the State of Utah.

16. In refusing to give full faith and credit to the Judicial Proceedings of the Supreme Court of the State of Utah.

17. In refusing to give full faith and credit to the Proceedings of the Industrial Commission of the State of Utah.

18. In refusing to give full faith and credit to the Certifications of Dr. William R. Tyndale and Dr. F. F. Hatch who are the keepers of the Record of the Case.

The plaintiff-appellant deems the entire record as filed to be necessary for the consideration of the contentions above enumerated.

NICHOLAS J. CURTIS, LL.B.,
Plaintiff-Appellant Appearing in Person.
Address: No. 211 Woodside Ave.,
Ridgewood, New Jersey.
Temporary Address: No. 106 Mansion Street,
Poughkeepsie, New York.

TO:

Minton & Rogers,
Attorneys for themselves and
Utah Fuel Company and those
named in the Special Appearance,
Trenton Trust Bldg.,
Trenton, New Jersey.
A. P. Rosenkranz,
Paterson, N. J.

No. 867 (7)

Office - Supreme Court, U. S.
FILED
MAR 24 1941
CHARLES ELMORE CROPLEY
CLERK

United States Circuit Court of Appeals

THIRD CIRCUIT, PHILADELPHIA, PA.

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, its officers and agents, specifically, DR. E. R. MURPHY; DR. ROBERT S. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MINTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; HELEN N. PAPPAS, Paterson, N. J.; SORTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANZ, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D. C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAZEN (MELVIN J. HAYS) Washington, D. C. (cannot be found); WILLIAM H. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. PAUL, Salt Lake City, Utah (no appearance. In default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON BAMBERGER, Salt Lake City, Utah (deceased, BAMBERGER COAL CO. substituted); DR. FREDERICK DUNN, Springville, Utah (appear by Special Appearance, name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. A. C. CALLISTER, Salt Lake City, Utah (appearance by Special Appearance, name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance, name only); CAROL C. JOHNSON, New York (Motion to Vacate); JOSEPH RIBIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES E. MAYBE, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance; in default),

Appellees.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CRCUIT, PHILADELPHIA, PA.

PARTS OF THE RECORD PRINTED

NICHOLAS J. CURTIS,
Appellant,
vs.
UTAH FUEL COMPANY, ET ALS,
Appellees.
Case No. 7525
OCTOBER TERM 1940

DOCUMENT INDEX AND DOCKET ENTRIES OF THE TYPED RECORD OF THE CASE IN THIS COURT.

1. January 12, 1940, Printed Complaint Filed. The inclosed copy is a true and correct copy as it was received from the printers.

2. March 25, 1940, Supplemental Complaint Filed (attached to the above and it is pp. 113-114) and summons issued (26 copies).

3. Marshal's Return of Service of Summonses with copies of complaint filed April 16, 1940. .....page 1. of Record of Pleadings.

4. Notice of Motion of some of the defendants, Utah Fuel Co. et als., and Special Appearance of Minton & Rogers, pp. 2-6.

5. Plaintiff's Opposing Affidavit Opposing the Special Appearance and Motion of Utah Fuel Co. and Minton & Rogers, filed on the 26th day of April, 1940.....pp. 7-31.

6. Plaintiff's Praecipe to the Clerk to stop the hearing of Motion and Special Appearance filed by Minton & Rogers from going before Judge Phillip Forman, filed about the 26th day of April, 1940. ..... p. 32,

7. Application for Entry of Default against Charles W. Kutz .....p. 33.

8. Application for Entry of Default against Mark Tuttle ..... p. 34.

9. Amendment to Original Complaint to change the names of Drs. Paul and Taylor, filed May 16, 1940, Sommonses issued on the same date. .....pp. 35-37.

10. Memorandum from the Clerk's Office as to Services of Summonses and copies of the Complaint on Drs. Taylor and Paul. ..... p. 38.

11. Plaintiff's Notice of Motion and Motion to Substitute the Bamberger Coal Co. in place and stead of Simon Bamberger, deceased, filed May 20, 1940.....pp. 39-47

12. Notice of Motion for Commission to Examine Witnesses residing in Greece filed May 13, 1940. It is not in the Record.

13. Notice of Service of copies of Applications to Take Depositions in the State of Utah, filed May 16, 1940...p. 48.

14. Marshal's Return of Service of Summonses with copies of Complaint on Drs. Paul and Taylor, and Bamberger Coal Company .....p. 49.

15. Application for Entry of Default against Drs. Paul and Taylor, and The Bamberger Coal Co. .....p. 50.

16. Application for Default Judgment .....pp. 51-56. Filed July 3, 1940.

17. Memorandum to the General Status of the Case, filed July 1, 1940. ..... pp. 57-60.

18. Motion for Leave to Amend the Prayer of the Complaint, filed July 1, 1940. .....pp. 61-63.

19. Notice of Application for Default Judgment....p. 64.

20. Notice of Motion and Motion of Carol C. Johnson. Filed April 25, 1940. .....pp. 65-67.

21. Plaintiff's Opposing Affidavit Opposing Carol C. Johnson's Motion vacating and setting aside service of summons and Complaint, filed about April 22nd, 1940. pp. 68-84.

22. Notice of Motion to Strike Complaint and Quash Summons re Nicholas J. Pappas, et als. .....pp. 85-87.

23. Plaintiff's Opposing Affidavit Opposing the Motion to Strike Complaint re Nicholas J. Pappas, et als, ..pp. 88-103. There are nine (9) Supporting Affidavits annexed to the Opposing Affidavit in Support of the Claim against Pappas et als.; 1st. Dan Curtis, p. 104; 2nd. George P. Curtis, p. 105;

3rd. Gust Livis, p. 106; 4th. Kiriakos Avramidis, p. 107; 5th. John Gall, pp. 108-109; 6th. Mary L. Stagg, p. 110; 7th. Charles Ariento, p. 112; 8th. Eustathios Aravanis, p. 113; 9th. Apostolos Aravanis, p. 114.

24. Sections 52, 54, and 88 of Title 18, U. S. C. A. . . p 115.

25. Hugh's Federal Practice Sections 18681, 18682, 18683, 18684. .....pp. 116-118.

26. Foster's Federal Practice. .....p. 119.

27. Hague v. Committee of Industrial Organization (27). .....p. 120.

28. Certificate of Hon. Wm. P. Rowland, Clerk U. S. C. C. A. 3rd C. ..... p. 121

29. Praecipe for Entry of Default against Charles W. Kutz. ..... p. 122.

30. Praecipe for Entry of Default against Drs. Paul and Taylor, and the Bamberger Coal Co. ..... p. 123.

31. Praecipe for Entry of Default against Mark Tuttle. ..... p. 124.

32. Certificate of Benjamin F. Havens, Clerk U. S. Dist. Ct., Dist. of N. J. swearing he refused to enter the defaults he received. ..... p. 125.

33. Appellant's Exception and Motion of Appeal to The United States Supreme Court. ..... p. 126.

34. The Decision of the Circuit Court of Appeals Third Circuit on page 127.

35. Stenographic Transcript as received; and plaintiff's Objections thereto as submitted to the Stenographer, etc.

NICHOLAS J. CURTIS.

NICHOLAS J. CURTIS, LL.B.,
Plaintiff-Appellant, Appearing in
Person. No. 106 Mansion Street,
Poughkeepsie, New York.

The Record is true and complete.

NICHOLAS J. CURTIS.

Subscribed and sworn to before me
this 31st day of January, A. D. 1941.

IRENE E. LANSING,
Notary Public.

MARSHAL'S RETURN OF SERVICE OF SUMMONS

I, Gilbert Mecham, United States Marshal for the District of Utah, hereby certify that I received the within attached summons at Salt Lake City, Utah, the 8th day of April, 1940, and served the same by leaving a true and correct copy of the summons and complaint, duly indorsed and dated with each of the following defendants,

April 8, 1940, Dr. R. E. Murphy, personally (E. R. Murphy)
April 9, 1940, W. D. Sutton, personally
April 9, 1940, Mark Tuttal, personally
April 9, 1940, Wm. H. Folland by wife, Grace Folland
April 9, 1940, Dr. A. C. Callister, personally
April 9, 1940, Charles E. Maybe, personally (Charles R.)
April 9, 1940, Dr. D. E. Smith "
April 9, 1940, D. O. Larson "

at Salt Lake City, Utah.

April 11, 1940, Dr. Frederick Dunn, personally at Springville, Utah.

I further certify the following are either deceased or unknown,

Dr. Samuel Wolf, deceased
Dr. J. C. Paul, unknown
Joseph Ririe, deceased
Simon Bamberger, deceased
Dr. Arthur Taylor, unknown

Signed at Salt Lake City, Utah, this 18th day of April, 1940.

GILBERT MECHAM,
United States Marshal.
By ALF. G. GUNN,
Chief deputy.

9 services @ $2	$18.00
71 mi. @ 6c	4.26
Money orders	.06
Railway express	.45
Refund	2.23
	$25.00

NOTICE OF MOTION

PLEASE TAKE NOTICE that on behalf of The Utah Fuel Company and H. Collin Minton, Jr., we shall apply to the Honorable Phillip Forman, one of the Judges of the United States District Court for the District of New Jersey, at the United States District Court Room, Post Office Building, Trenton, New Jersey, on Friday, May 3, 1940, at ten o'clock (Daylight Saving Time) in the forenoon, or as soon thereafter as counsel can be heard, for an order striking out the complaint filed by you in the above stated cause upon the following grounds:

1. In the first count the plaintiff fails to allege any facts tending to show an obligation on the part of the defendant, The Utah Fuel Company, to reimburse the plaintiff for the alleged expenditures by the plaintiff for the benefit of another, or of any agreement or undertaking on the part of the defendant company so to do. Nor is Exhibit "A" referred to therein evidence of any such alleged obligation.

Plaintiff relies upon the allegations of Paragraphs 3 to 13 as a basis for establishing the obligation alleged in the first count. While the said paragraphs may allege an agreement between the defendant company and a third person, there is no allegation therein contained of any expressed or implied agreement on the part of the defendant company to reimburse plaintiff for alleged voluntary expenditures by plaintiff for the benefit of said third person.

2. In the second count the plaintiff fails to allege any facts which would disclose a cause of action against the defendant-company and its agents or associates, and the allegations of paragraphs 36 to 39 therein referred to set forth facts that are totally disconnected with the activities of the company-defendant and its agents and associates. The second count contains vague, indefinite and unrelated allegations, and is made up of accusations and conclusions of law totally unsupported by alleged facts.

3. In the seventh count the plaintiff fails to allege any facts which would constitute grounds for a cause of action

against the defendant-company and its agents, and it is otherwise indefinite, uncertain, scandalous and bad for duplicity, and is made up of accusations and conclusions of law totally unsupported by alleged facts.

4. In the eighth, ninth and tenth counts plaintiff fails to allege any actions of the therein named defendants which are in any way attributable to the defendant-company and its agents and associates, and hence the allegations of activities on the part of the therein mentioned defendants which took place more than twenty years ago are totally unrelated to any alleged acts of the defendant-company. In addition there is contained in the tenth count scandalous charges against an officer of the United States Courts.

5. In the eleventh, twelfth, thirteenth and fourteenth counts plaintiff makes scandalous accusations of alleged misconduct on the part of the defendant-company and its agents and associates,—which wrongful acts, it is alleged, took place more than twenty years before and were committed with the purpose of preventing plaintiff from prosecuting an alleged cause of action against the defendant-company. There are, however, no facts alleged which would tend to establish the claim that plaintiff had cause to institute suit against defendant-company and, indeed, the plaintiff's allegations clearly defeat the contention that he has or ever had a cause of action against defendant-company.

6. The fifteenth, sixteenth and seventeenth counts contain nothing more than a number of unrelated, irrelevant and scandalous charges against several named defendants who are in no way alleged to have acted as agents or associates of said defendant-company, or to have had any connection with said defendant-company.

7. The eighteenth, nineteenth and twentieth counts contain further unrelated, irrelevant and scandalous charges involving alleged acts performed approximately eighteen years ago by persons whose connection with defendant-company is not stated. Furthermore it is alleged that such

remote and unrelated acts were done for the purpose of preventing plaintiff from prosecuting an alleged cause of action which is shown on the face of the complaint never to have existed in the plaintiff's favor.

8. The twenty-third and twenty-fourth counts contain scandalous charges that the defendant-company conspired with petitioner herein to maliciously renew and re-open the alleged persecution of the plaintiff,—although it appears from the allegations of the plaintiff that petitioner herein appeared in behalf of defendant-company in answer to a complaint filed by said plaintiff against said company-defendant.

9. The twenty-fourth count also contains unrelated and scandalous allegations concerning the Courts and officials of the United States.

10. The twenty-fifth count contains only a narrative of facts which are unrelated, irrelevant, immaterial and scandalous, and contains no allegation of probable cause.

AND FURTHER TAKE NOTICE that at said time and place we will move for an order striking the said complaint and all counts therein upon the ground that said document contains unrelated and scandalous allegations concerning the Courts and officials of the United States of America and the State of Utah, and should not be allowed to remain among the records of this Court.

Respectfully,
Minton & Rogers,
Attorneys for Defendants, The Utah Fuel Company and H. Collin Minton, Jr.

SPECIAL APPEARANCE & NOTICE

TAKE NOTICE, That I hereby enter a Special Appearance on behalf of the defendants Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe, (Charles R. Mabey), and W. D. Sutton; and that on Friday, May 3,

1940, at 10:30 o'clock in the forenoon, (D. S. T.), or as soon thereafter as counsel may be heard, in the United States District Court rooms, Post Office Building, Trenton, N. J., I will move to quash service of the subpoenae made upon the above named defendants.

Respectfully,
Minton & Rogers
Attys. for above named
def'ts by special
appearance

OPPOSING AFFIDAVIT DIRECTED AGAINST THE MOTION TO STRIKE THE COMPLAINT HEREIN FILED BY THE DEFENDANTS.

Before me, the undersigned authority, personally came and appeared Nicholas J. Curtis, who, being first duly sworn, deposes and says:

That he is the complainant herein; that he has prepared, drafted, and typed the above entitled Opposing Affidavit and personally knows the facts and lays set forth herein and after, and finds and presents to the Honorable Court that he is of the opinion that this Honorable Court has no jurisdiction or authority to entertain said Motion as such because the plaintiff is of the opinion that this Court has jurisdiction of the defendants and of the subject matter of the action, because and for the following reasons and each of them:

1. The plaintiff is proceeding under Section 103, Chapter 4, of Title 28, U. S. C. A.:

"When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein." (R. S. Sec. 731; Mar. 3, 1911, c. 231, Sec. 42 Stat. 1100);

or, under Section 729, Chapter 38, Title 28, U. S. C. A.

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of chapter 3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law the common law, as modified and changed by the constitution and statute, of the state wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and if it is of criminal nature, in the infliction of punishment on the party found guilty, (R. S. Sec. 722.);

or, under both said sections; The Constitution and Revised Statutes of the State of Utah and the Ruling Case Law under the same;

And The Rules of Civil Procedure for the District Courts of the United States, Adopted by the Supreme Court of the United States Pursuant to the Act of June 19, 1934, Ch. 651.

2. These said Rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity. They are intended to secure the just, speedy, and inexpensive determination of every action. Rule 1. These Rules, or their provisions thereof, deprives this court of jurisdiction, or of right, or of authority to try this case upon a demurrer filed by a Law Office Agency who are sued jointly with all the other defendants with criminal conspiracy committed against the Constitution and Laws of the United States.

3. Rule 7 (a) provide:

There shall be a complaint and an answer; and there

shall be a reply, if the answer contains a counter claim denominated as such; . . .

No other pleading shall be allowed except that the court may order a reply to an answer or a third party answer. R. 7 (a).

4. Rule 7 (c) provides:

Demurrers, Pleas, Etc. Abolished.

Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

5. Rule 7 (b) provides:

A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies . . .

6. Rule 8 (a) provides:

A pleading shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . ., (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

7. Rule 8 (b) provides:

DEFENSES; FORM OF DENIALS

A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. (etc.) . . . he may do so by general denial subject to the obligations set forth in Rule 11.

8. Rule 8 (e) provides:

PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a

claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

9. Rule 8 (f) provides:

All Pleadings shall be construed as to do substantial justice.

10. Rule 12 (b) provides:

Every defense, in law of fact, to a claim for relief in any pleading, whether a claim, . . ., shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted.

11. Rule 12 (e) provides:

MOTION FOR MORE DEFINITE STATEMENT OR FOR BILL OF PARTICULARS

Before responding to a pleading or, if no responsive pleading is permitted by these rules, within 20 days after the service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. The motion shall point out the defects complained of and the details desired.

12. Rule 12 (f) provides:

Upon motion made by a party before responding or, . . .,

the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading.

13. Rule 12 (h) provides:

A party waives all defenses and objections . . ., except (1) that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a legal defense to a claim . . . and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action . . .

14. Rule 15 (a) provides:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, . . .

15. Rule 15 (c) provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

16. Rule 20 (a) provides:

All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. Judgment may be given . . . and against one or more defendants according to their respective liabilities.

17. Rule 21 provides:

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of court . . .

Point (a) The scope of these said rules require their construction to secure a just, speedy and inexpensive determination of every action. Rule 1. Thomas v. Godstone, D. C. N. Y. 1939, 27 F. Supp. 297.

Point (b) These rules were adopted not only to simplify procedure but to relieve rather than add to the burden of the Motion Judge Foster Wheeler Cor. v. Am. Surety Co. of N. Y. D. C. N. Y. 1938, 25 F. Supp. 700.

Point (c) These rules are designed to enable the disposition of a whole controversy of interested parties, conflicting claims, at one time and in one action, provided all parties can be brought before court and matter decided without prejudicing rights of any party U. S. to use and for Benefit of Foster Wheeler Corp. v. American Surety Company, Supra.

Point (d) These rules were designed to simplify court proceedings. Bobrecker v. Denebeirn, D. M. 1938, 25 F. Supp. 208.

Point (e) The purpose of the new rules of civil procedure for the District Courts is to avoid technicalities. Rules of Civil Procedure for the District Courts, Rules 4 (d) (6), 28 U. S. C. A. following section 723c.—Moore v. City of Lehigh, 29 F. Supp. 39.

Point (f) Rule 20 of the new Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c governs the situation. In substance, that provides that joinder of parties defendant is permissible if the claim or claims alleged in an action arise out of a series of transactions or occurrences and there is any question of law or fact common to all of them which will arise in the action.

This case does arise out of the same series of occurrences and there are a number of common questions of fact and law in issue.

The case of Ader v. Plau, 241 N. Y. 7, 148 N. E. 771, 41 A. L. R. 1216, and cases following it, which denied alternative joinder of causes of action where there is a common question of law or fact, are not in point since the adoption of the New Federal Rules which govern the procedure in the Federal Courts and this is a matter of procedure.

It is obvious why this defendant would prefer to try his case separately, but doing so will result in no substantial

prejudice to him; on the other hand delay, expense and inconvenience to witnesses and all concerned will be considerably lessened by trying the entire matter at the same time.

Furthermore, as Judge Paterson said in Julius Klugman's Sons v. Oceanic Steam Nav. C., 42 F. (2nd) 461, "Otherwise, it might happen that the complaint was dismissed as to a defendant and that later on a remaining defendant presented clear proof pointing toward the liability of the defendant who was then no longer in the case."

The defendant's Motion is denied. Goddard, D. J. in McNally v. Simons et al, D. C. Southern District of New York, July 19, 1939.

Point (g) Rule 20 of the New Federal Rules following section 723c. govern the situation before the Court. The Decision set forth above (Point f) is controlling authority in this case and the statements to-wit: totally disconnected with the activities of the company-defendant; Par. 2, line 6; . . . unrelated allegations; Par. 2, line 8; . . . totally unsupported by alleged facts; Par. 3, line 6; . . . attributable to the defendant company and its agents and associates; Par. 4, line 3; . . . totally unrelated to any alleged acts of the defendant-company; Par. 4, line 6; . . . in no way alleged to have acted as agents or associates of said company-defendant, or to have had any connection with said defendant-company; Par. 6; . . . unrelated, irrelevant and scandalous charges; such remote and unrelated acts and plaintiff's right to sue have never existed; Par. 7; in committing the overt acts before this court these said petitioners herein appeared in behalf of defendant-company; Par. 8; . . . unrelated and scandalous allegations concerning the Courts and officials of the United States; Par. 9; unrelated, irrelevant, immaterial and scandalous allegation; Par. 10; . . . unrelated and scandalous allegations concerning the Courts and officials of the United States of America and the State of Utah; closing paragraph Second Motion.

Point (h) Every statement made and set forth in said

motion is a fabrication made with intent to defeat the purpose of the Federal Rules of Civil Procedure.

Point (i) One who, learning of a conspiracy or unlawful combination after is formed, joins it then, or knowingly aids in the execution of the scheme, and shares in its profits, becomes, from that time, as much a co-conspirator as if he were one of the originators of the unlawful scheme. Hugh's Federal Practice, Col.. 3, Sec. 1776; United States v. Lake Shore & M. S. R. Co. 203 Fed. 295.

Point (j) The authority of Hyde v. United States 225 U. S. 347, 32 S.Ct. Rep. 793 governs the situation in this case. See Brown vs. Elliot, 225 U. S. 1136. The Court says:

We there held that the place of trial could be any state and district where an overt act was performed. And we further hold, following United States v. Kissel, 218 U. S. 601, 54 L. Ed. 1168, 31 Sup. Ct. Rep. 124, that conspiracy might be continuous crime.

We there said, distinguishing a crime from its results:

"But when the plot contemplates bringing to pass a continuous result that will not continue without the continuous co-operation of the conspirators to keep it up, and there is such continuous co-operation, it is a perversion of natural thought and of natural language to call such continuous co-operation a cinematographic series of distinct conspiracies, rather than to call it a single one."

These remarks are especially pertinent to the case at bar. It is alleged in the indictment that the conspiracy set forth was designed to be and was continuous; and being so, every overt (401) act* was the act of all the conspirators, made so by the terms and force of their unlawful plot . . .

Point (k) In paragraph 8 of said Motion the petitioners state that on or about the 11th day of December, 1937, appeared in behalf of defendant-company in this court in answer to a complaint filed by said, this plaintiff, and against said defendant-company. Right. He was acting for himself and in behalf of the defendant-company, namely the defendant Utah Fuel Company.

There he proceeded and groaned and lamented pleading and arguing as follows:

We hold that he is not well yet. You can see him how he is sitting. He is not well yet but he practiced fraud and got out. The certificate he is holding is false because it was given to him to enable him to get back to his home but he refused to go after he got out. He is not well yet but we do not want to prosecute him at this time. He suffered enough. All we want at this time is to dismiss this suit and allow him to go on. He is rich and they have business at Athens, Greece. We gave his brother treatment but he refused to take it and went and hired private doctors. (etc.)

These statements are construed by the plaintiff to be an authorized adoption by the defendant, Utah Fuel Company its offices and agents, and H. Collin Minton, Jr. and his associates of every single act or overt act done during the entire life of the conspiracy to carry into effect the object of the conspiracy complaint of. If each conspirator was the agent of the others at the later time, at the date of this said hearing, he remains an agent during all of the former time as well as to this date. Such are the reasonings of the Supreme Court in all cases direct in points of the case at bar. See Brown v. Elliot; Hyde v. United States; United States v. Kissel supra.

Point (l) Now this Court has before itself the defendant Dr. Frederick Dunn, the Superintendent who acted as oppressor jailer and martyrically jailed and imprisoned this plaintiff; it also has every other defendant who willfully carried on the infernal conspiracy for years.

Point (m) The provisions of Section 729 of Chapter 18, of Title 28 U. S. C. A. should be extended and made to apply and govern the situation before this Court now present in this case. This Court should take into consideration the character of the defendant-company and its wealth with which it hires lawyers and have them plead unrelated, unrelated and unsupported. That is fraud and fraudulent practice to obstruct justice and the due course of the ad-

ministration of the laws.

Paragraph 18. The answer of the plaintiff to the statements set forth in par. 1 of said motion is that the said paragraph is a demurrer to the declaration and demurrers are abolished by Rule 7 (c) above on page 2.

Point (a) In the first count the plaintiff sues the defendants for money paid by the plaintiff for the use of the defendants under the circumstances set forth in para's 3 to 13. On para's to 6 on pages 3 to 7 the plaintiff alleges the substance of the case of Long v. Bobcok Lumber Co. cited on the 2nd para. of page 7. For the nature of that action see the decision of the Sup. Ct. of App. of West Virginia set out on pp. 93 to 97 of the Bill of Complaint and Authorities annexed thereto. The lumber company defendant in that case demurred to the declaration and its demurrer was overruled and thereupon appealed to the Court of Appeals. The Court of Appeals sustained the lower Court with costs.

Point (b) It has been m ade manifest by Act of Congress that there shall be no demurrers used to defeat the purpose of the federal rules. They cannot try the case on their demurrer. For these reasons the plaintiff insists that this court is without jurisdiction to try the case at bar upon the demurrer of persons charged jointly and severally with conspiracy so set forth above and in the Complaint. Objecting to the Court's entertaining said demurrer the plaintiff further says that he does allege that the defendant-company was under obligation to furnish treatment, operation, and hospitalization; and that the defendant Dr. E. R. Murphy, as local surgeon of the defendant-company and for whose conduct the defendant-company is responsible, failed and neglected to discharge his obligations to Dan J. Curtis, he being an employee of the defendant-company. See 2nd par. on page 106 of Complaint. Tony Flementis Case in full. On page 10 par. 1 of the Complaint the plaintiff alleges, to-wit: And thereupon the said defendant Dr. R. E. Murphy, sent the said sick or injured brother of this plaintiff out of said employers hospital and to the home of this plaintiff

and directed him to care for his said sick brother and to act as his nurse.

These said Statements constitute both an expressed and implied agreement between this plaintiff and the defendant-company for whose behalf the defendant, Dr. Murphy, was contracting.

The plaintiff pleads the laws of Master and Servant and calls the Court's attention to the authorities, Cases and parts of Cases set forth on pages 60 to 109 of the Printed Complaint.

Point (c) The crucial points and ultimate facts in the case are:

Was this plaintiff from thereafter he was ordered by the defendant's contract doctor to take care of the case and do as he was told by said doctor engaged in the discharge of the duties of a servant of the defendant, Utah Fuel Company;

Point (d) And was plaintiff's said services and expenditures accepted by the defendant Utah Fuel Company;

Point (e) Was such services rendered and accepted? See Murray v. Wasatch (etc.) Sup. Ct. of Ut. pp. 60-61. See also p. 77; where when an employee either on his employer's or his own time, is upon some substantial mission for the employer growing out of his employment in which cases the employee is within the provisions of the Act. Morgan v. Ind. Comm, p. 78, Sup. Ct. of Ut; Frick J. in Twin Peak Cann, Co. v. Ind. Comm.—on p. 80, 5th par.; For a period of or about 40 days the defendant doctor Murphy visited said patient and kept giving him castor oil capsules, inquired into his condition and gave orders to this plaintiff what to do. The plaintiff have had to do that which the said defendant dictated to him to do. He made daily appeals to said doctor for hospitalization and operation and all he received a dry No.

Point (f) The test is whether said business can fairly be called Master's. Ford Motor Co. v. Ind. Comm. p. 81 and cases cited thereunder.

Point (g) When an injury comes or damages sustained while the workman is doing the duty which he is employed to perform he is protected by the law of master and servant and the Industrial Act of the State of Utah. Covey-Ballard Motor Co. v. Ind. Comm. p. 82; "Wheresoever such injury or damages occurred." Cudahey Packing Co. v. Paramora, p. 82.

Point (h) This plaintiff was exposed to the dangers and made the expenditures and performed the services because the employer company and its business put him there; this plaintiff but for the fact that he was at the time of expenditures and services paid and performed doing work for the employer, Utah Fuel Company. P. 83 and cases cited thereunder. Sup. Ct. of Utah.

Point (i) Where an employee either in employer's or his own time, is upon some substantial mission for the employer growing out of his employment he is protected by the Industrial Act. Kahn Bros. et al. v. Ind. Comm. p. 84. He was doing the errand he was directed to do; same case; p. 84; He was obeying the orders of his employer. Same case p. 85; He himself determines the locus or situs of his employment—it is where his work put him. Morgan v. Ind. Comm. p. 86; In the interest of, or under direction of his employer. England v. Fairview School Dis. p. 56.

19. The plaintiff's Answer to subdivision 1 of par. 1 of said motion is that when services are rendered and moneys expended by one person for another and voluntarily and knowingly accepted without more, the law will imply a promise to pay what the services were reasonable worth and whatever reasonable expenditures made. Gleason v. Salt Lake City p. 87, par. 1 to 6; See Arenson v. Robinson on pp. 88-89. It is Clearer there than it would be here. The said statements of said subdivision are unfounded because on par. 6, page 10 the plaintiff alleges that he was ordered, and directed, by the defendant Dr. Murphy to do so with said doctor supervising his pretended treatment.

Point (a) The defendant-company was then a reputable

employer and made good all its contracts with this plaintiff irrespective of the services which he may be called or employed to perform.

Point (b) To care for a sick person would mean to perform all the services needed and all expenditures needed. A sick person cannot live on nothing. The defendant-company had no right to require of this plaintiff to maintain a studio clinic and care for its employees for which services it received thousands of dollars every month. The plaintiff does solemnly swear that the pretences presented to this court by these defendants are corrupt and deceptive. To persons familiar with the defendant's, Utah Fuel Company, operations in Carbon County these statements would sound debaseful and scandalous because they are so and are made to further vex, embarrass and injure this plaintiff. The statements that plaintiff's expenditures were voluntary expended are false and sham and unfounded. There were expressed promises made by Dr. Rigbe in behalf of the defendant's head doctors.

20. The statements set forth in par. 2 of said motion are groundless and without force or effect. The defendants in this suit have no right to oblige this plaintiff to treat every overt act a separate and distinct act, namely, unconnected unrelated (etc.) Please read in par. 17 on pages 5-6. Judge Goddard's decision and points thereabove and below.

21. The plaintiff's answer to the statements set forth in par. 3 of said motion is that adoption by reference in a different part of the same pleading (namely, after the aforesaid thereodies had been committed (etc.) is permitted by rule 10 (c). Aforesaid there means the statements set forth in the 6th count and par. 12. Paragraph 12 is not made of accusations and conclusions but of good clean statements in natural language readable and understandable by public school graduate.

22. The plaintiff's answer to the statements set forth in par. 4 of said motion is that the defendants have no right to complain that the overt acts complained of in Counts 8,

9, and 10, took place more than twenty years ago because the defendant, Utah Fuel Company, was timely sued in the District Court of the United States for the District of Utah. There it filed an objection and claimed exemption from suit, a decree or judgment was entered directing, to-wit: Law 5547.

This case is disposed of by the decision of the Circuit Court of Appeals of this Circuit in the case of Cambel vs. Duluth Etc. C., 50 Fed. 241. The Court says:

"The Acts of Congress do not, in our opinion give the citizens or subjects of foreign states the right or privilege of maintaining an action against the citizens of the United States in the Circuit (District) Courts of any District in which agents of the defendant carrying on their business. If they desire to bring a suit in the Federal Court of the nature of the one at bar, they must resort to the Circuit (District) court in the district of defendant's residents."

Adapting the paragraph found in the opinion in the case above referred to, it would seem to follow that if this plaintiff, a subject of the Kingdom of Greece, desires to bring a suit against this defendant in the District Court of the United States, he must do so in the District of New Jersey of which the defendant is an inhabitant.

The defendant Fuel Company was then a double charter corporation with the Pleasant Valley Coal Company, a Utah corporation. That fact this plaintiff brought it to the attention of the Hon. Tillman T. Johnson, judge of the federal court for the District of Utah, but his honor refused to listen to the danger of the circumstances. In the state District Court at Salt Lake City, Utah the case pending, that court refused to dismiss that complaint and D. O. Willey, attorney of record ordered this plaintiff out of his offices and insisted that he proceed to hearing upon his false complaint. Thus this plaintiff have had to leave the state of Utah or be beaten to death in the streets as assaults begun to be made and death threats delivered to the plaintiff's door. The plaintiff went to Ogden Canyon where

judge Johnson was building a house for his summer and found him on the top of the building. His honor came down and examined the photographs and marks made on the photographs but said that he did not know what to say.

The statement that the activities of the defendants named in Counts numbered 8, 9, and 10 are unrelated to any alleged acts of the defendant-company are statements made believe, because the said defendants had with them to go by with the files and records of the case of the plaintiff against the defendant-company, and they took time enough to have a complete account of the same as it took them 8 or 10 days, more or less, to between the first arrest and the date of the issuance of the information against this plaintiff and in the meantime they left nothing undone to force a breakdown upon the life of this plaintiff. 24 hours in a day and in a night they kept delivering attacks and assaults with and without force and kept sleepless throughout the nights.

The statements that the 10th Count contains scandalous charges against an officer of the United States Courts are fabrications forming a veil behind which these defendants can seek cover from the law. They should not care as much as that for the Officers of the United States Courts. That is a patent for conspirators. The United States Courts take care of themselves. The plaintiff is a helpless Greek without any friends or relatives to dare to say a word. He belongs to no Union or any Organization of any kind or nature whatsoever and "never" did. "Never visits" a questionable place and leads a clean and noble life. If there be any official who uses his office for the commission of crimes then it is his hard luck.

Be it said, that this plaintiff did sue these defendants in the Federal Court for the District of Utah, or in the State Courts there unjustly and without color of right to do so. What then of these:

R. S. of Utah-103-26-42. Common Barratry. Defined

Common barratry is the practice of exciting groundless

judicial proceedings and is punishable by imprisonment in the County jail not exceeding six months or by a fine in any sum less than $300, or by both. (C. L. 17, Sec. 8008)

103-26-44-Id. Proof Required for Conviction.

No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances and with a corrupt and malicious intent to vex and annoy. (C. L. 17, 8009)

Chapter 43. Perjury.

103-43-1. Every person who, having . . . stated as any material matter which he knows to be false, is guilty of perjury.

103-43-8. Penalty for Perjury.

Perjury is punishable by imprisonment in the state prison not less than one nor more than ten years. (C. L. 17, Sec. 7987)

Chapter 58. Vagrancy. 103-58-1. Vagrant.

Did not these learned defendants know enough to take advantage of the protection afforded to them by the said provisions?

Were not these said sections in force ready to be resorted to to suppress the commission of crime?

Whom they protected from the attacks made against him or them by this plaintiff? The truth is that they are unworthy of belief.

The defendant Charles E. Maybe succeeded Simon Bamberger as Governor of the State of Utah. Thereupon this plaintiff applied to him by Petition praying for an investigation of the merits of the case At the regular monthly meeting of the Board he held his meeting just outside the door of Ward C wherein this plaintiff was imprisoned. They caused everyone in the said Ward to appear before said Board for examination and investigation. This plaintiff was excluded and kept in confinement. In the afternoon of the day and after the Board of Governors adjourned the defendant Charles E. Maybe came into Ward C with Dr. Hyde and found this plaintiff standing at the window

watching holiday and the in and out of the then officials. Dr. Hyde called this plaintiff and he responded and went there. The Dr. introduced the Governor and stated to this plaintiff that he came to see him in answer to the petition filed with him. Then the plaintiff appealed to him and promised him that he would do anything to clear the matter up. Then the defendant Maybe stepped backwards out of the Ward and threatened this plaintiff to shut up, shaking his head just as to tell this plaintiff his days were over if he did not shut up. The Dr. asked him what he say and he answered No, let him go we will deny him . . . During all this times in here he knows of everything that is going on in here and will expose us. Then the two left and plaintiff never seen him since. Martyric force, beatings, straight-jacket, and starvation followed and the Greek Consul was called into the case.

If these petitioners have been authorized to defend such State Officials they are not authorized from a red blood American. Their authority is the dollars they receive from the defendant-company and its officers and agents.

23. The plaintiff's answer to the statements set forth in par. 5 of said Motion is that although these defendants charge him with duplicity (par. 3, line 5.) they include four Counts in their one paragraph.

They further say:

—which wrongful acts, it is alleged, took place more than twenty years before and were committed with the purpose of preventing plaintiff from prosecuting an alleged cause of action against the defendant-company. There are, however, no facts alleged which would tend to establish the claim that plaintiff had cause to institute suit against defendant-company . . .

The 11th Count sets forth the acts of the defendants Wm. J. Fay, William H. Hazen (both unknown to the Marshal. The U. S. Marshal reports he is unable to find them) William H. Folland and Judge Ferdinand Erickson, Chief Counsel of the defendant-company and now dead. These

names appear of record in the Information issued against him at Salt Lake City, Utah by the defendant Fay and upon the mob proceedings had there upon. If they be scandalous they are made up of their own acts and plaintiff was powerless to stop them. Whatever that is it is their own make. They started criminal prosecutions without any criminal offense having been committed but to protect the defendant-company of its criminal operations.

These defendants are unworthy of belief because they attempt to transfer the practice of the defendant-company which they practice in the Courts within the State of Utah to this Court. The defendant-company has more law suits and judgments against it there than any other person or corporation. See the Printed Record. Just worthless talks until the judgments of the courts are made secure against it or them. Just groundless talks till they cannot talk any more.

The suit arises under the Constitution and Laws of the United States and Constitution and Laws of the State of Utah. See the Printed Record of them all. For authorities see paragraph 19 of this Opposing Affidavit for parts of cases and points.

Points: Point (a) For a proceeding or for proceedings had against the defendant-company for medical services rendered to its employee see Utah Fuel Company v. Ind. Comm. Corfman, C. J. Frick, Weber, Gideon and Thurman, JJ. Sup. Ct. of Utah p. 59 of Printed Record.

Point (b) As for reimbursement for moneys paid out by third persons see page 106 of Printed Record; Same doctor William R. Tyndale. Compare the circumstances of that case with the case at bar. Company doctor of the defendant-company at Castle Gate. The treatment Tony Flementis received in the St. Mark's Hospital and then ordered out. In the present case at bar the patient was put out. See page 57 to page 59 for controlling authorities.

Point (c) As to the payment for the nursing service to a relative see Sullivan v. Ind. Comm. Moffat J. p. 56;

Point (d) As for medical expenses provided by the defendant Utah Fuel Company in other cases see Frank Skubie v. Utah Fuel Co. p. 50;

Point (e) As for citations and parts of cases on 2nd par. on pages 49 to 52;

Point (f) As to the suit as a vested right of action see Halling v. Ind. Comm. Sup. Ct. of Utah last two lines on page 51 and continued on top page 52;

Point (g) Where the defendant Utah Fuel Company provided its employee with all medical, surgical, hospital and nurse services see Tony Agresh v. Utah Fuel Company p. 500 lines 21, 22 and one half;

Point (h) Paid to third persons see page 50;

Point (i) Where the defendant, Utah Fuel Company was made to pay and paid all medical and hospital expenses see Wm. M. Graham v. Utah Fuel Company, p. 50;

Point (j) Paid to doctor Hatch, one of plaintiff's doctors, see Dr. Hatch, p. 50, 6th line;

Point (k) As to employee's right to change doctors during treatment see Winn Jesse v. John Costa & State Ins. Fund, p. 58;

Point (l) As for hospitalization and operation under payroll deductions see Joe Stari v. United States Smelting (etc.) p. 59;

Point (m) As for the hospital contract based on contribution by the employee covering injuries and sickness see p. 88;

Point (n) As to the form and substance under the Industrial Act of the State of Utah see page 100, paragraphs 1, 2, 3, and 4 in addition to those provided by the Industrial Act. The contract covers it all while the Industrial Act governs accidents in the course of employment.

Point (o) The Proceedings of the Tony Flementis case are lawful and cannot be disputed. The facts agreement, practice and usages are expounded there by a Court of Three Commissioners. Above them they have the Supreme Court of the State and of the United States. See Cudahey

v. Paramore, p. 82.

Point (p) A judgment applies law to past or present facts. Oklahoma City Okla. v. Dollese (C. C. A. Okl. 48 F. (2nd) 734, 738. Paragraph found in the Opinion.

(1) We observe at the outset that we are bound by the construction the State Court gives to the State Laws. Citing: Truac v. Corrigan, 275 U. S. 321, 325, 42 S. Ct. 124, 66 L. Ed. 234, 27 A. L. R. 375.

Point (q) Where a foreign statute has been construed by the Courts of the State or Country where enacted, such construction will be followed by the courts of other States. (36 Cyc.) 1104; Citing: Cathheart v. Robinson, 5 Pet. 267, 8 L. Ed. 120; Bates Refrigerating Co. v Gillet, 20 F. 192; Humphreyville Copper Co. v. Sterling, 12 Fed. Cas. No. 6, 872, Brun ColCas; Prentis v. Zane, 19 Fed. Cas No. 11, 383; and numerous other cases from State Courts.

Point (r) The Federal Courts take judicial notice of the public statutes of all the states, and an action on a Statute of one State can therefore be sustained in a federal court in another state without pleading such statute. (36 Cyc.) Statutes page 1240. On page 1241.

Point (s) The Courts, however, must confine themselves to the construction of the law as it is. Flowing Wells Co. v. Culin, 95 Pac. 111; Curry v. Lehman, 55 Fla. 847, 47 So. 18; Walker v. Cicksbury Etc. R. Co. 110 La. 719, 721; Willis v. Bair, 150 Mich. 452; Philadelphia Fire Assoc. v. Love, 101 Tex. 376; Austin v. Cahil, 99 Tex. 172; St. Louis, etc. R. Co. v. Delk and not attempt . . . or otherwise amend or change the law under the guise of construction. Clerk v. Kansas City, etc. R. Co. 219 Mo. 524.

24. Par. 6 of said Motion: The fifteenth, sixteenth and seventeenth counts contain nothing more than a number of unrelated, irrelevant and scandalous charges against several named defendants who are in no way alleged to have acted as agents or associate of said defendant-company, or to have had any connection with said defendant-company.

The plaintiff's answer to said par. or to the statements

set forth therein is that the "unrelated" "irrelevant" scandalous "charges" against several named defendants who are in no way alleged are to bolt nonsenses. H. J. Binch, is the Chief Counsel of the defendant Utah Fuel Company and Secretary to the Bamberger Coal Company; Defendant Utah Fuel Company owns entire capital stock of the Bamberger Coal Co. The defendant Simon Bamberger was Governor of the State of Utah and president of his coal company and the two used the Criminal Insane Asylum of the Criminal Insane to suppress suits against themselves and to protect their cut throat they have in Carbon County Coal Mines and coal mining lands. See the Counts.

25. The plaintiff's answer to the statements set forth in par. 7 of said motion, to-wit: unrelated, irrelevant and scandalous matter (etc.) is this: The Informations were issued; Arrests made; Mob and Lawless trials conducted and gave their reasons to be these: "September 1918 begun proceedings against conspirators. Ideas of persecution and conspirators in connection with bar examinations and Utah Fuel Company . . ."

Certified Copy of their Criminal Proceedings is in the hands of the plaintiff. See the Exhibits in the former and first suit.

In their third Criminal Information they typed these: Very defined delusions of persecutions. Has made numerous complaints against his supposed persecutors, Judges of the Supreme Court. Judges of District Courts, Attorney-At-Law, Utah Fuel Company, et al. filing suits against above.

State laws for unlawfully filing a suit and committing perjury therein see page 15 of this Affidavit. They have had to act for the Utah Fuel Company. They have had to stop plaintiff's suit against the Utah Fuel Company. They used Criminal Information mob and beatings to stop the law from bothering Utah Fuel Company. They have had to use the Criminal Insane Asylum to stop the law suit.

26. The plaintiff's answer to the statements set forth on par. 8 of said motion is the same as the one set out on page 8 of this Affidavit. The Clerk's of this Court then present in Court are witnesses to all these. So are the Court Officers.

27. The plaintiff's answer to par. 9 of said Motion is the same as that set forth in the last par. of page 14 of this Affidavit and cont. on page 15. The Character Record of this plaintiff is stainless and of the highest virtues in the world. The United States Courts, Government, and their Officials are not in danger from this plaintiff, a helpless Greek. The statements of the petitioners are nonsenses fabrications to get their pay from the defendant Utah Fuel Company and cover their criminal practice.

They mean to say that this plaintiff will take the U. S. Government and go or destroy it. They call these foolish and it is.

27. (Par. Set forth as Second Motion to-wit:

AND FURTHER TAKE NOTICE that at said time and place we will move for an order striking the said complaint and all counts therein upon the ground that said document contains unrelated and scandalous allegations concerning the Courts and officials of the United States of America and the State of Utah, and should not be allowed to remain among the records of this Court.)

To these said statements the plaintiff's Answer is:

The Constitution of the United States (and of every civilized country) is not intended as a facility for crimes. It is intended to prevent oppression; and its letter and its spirit are satisfied if, where a criminal purpose is executed, the criminal purpose be punished. It is there that its victims are sought and defrauded. It is there that its perpetrators should be brought to the bar of justice for their acts; not for the mere conception of them but for the actual execution of them. The venue of his trial is made by the Criminal himself, not determined by reason or interests which may be adverse to him and used to his injury. Su-

preme Court of the United States in Brown v. Elliot 225 U. S. 1136. And see Hyde v. Shine; Hyde v. U. S.; and U. S. v. Kissel.

As to the whole of the two Motions the plaintiff further says: (a) An individual may commit a crime within a state in which he is not physically present at the time the crime is committed. There may be a constructive presence in a state, distinct from a personal presence, by which a crime may be consumated. And, if it may be consumated, it may be punished by an exercise of jurisdiction; i. e., a person committing it may be brought to trial and condemnation (Hyde v. United States 225 U. S. 547, 32 S. C. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; Moran v. United States, (C. C. A. Tenn. 1920) holding that there may be a constructive presence in a state, etc.). A crime may be consumated in a state other than that where the offender personally happens to be, and so be punishable in the former place where the accused is constructively present (Grayson v. United States (C. C. A. Tenn. 1921.) 272 F. 553, certiorari denied (1921) 257 U. S. 637, 42 S. Ct. 49, 66 L. Ed. 409; Burton v. United States 202 U. S. 344, 26 S. Ct. 688, 50 L. Ed. 1057 Ann. Cas. 362. Hugh's Federal Practice Section 6842.

(b) Subject: Conspiracy.

The Sixth Amendment requires the accused to be tried not where he resides, but in the district "wherein the crime shall have been committed," and, where the indictment (complaint) charges a conspiracy to have been committed in a certain district, as well as in other districts including that in which the defendant resides, the trial may be had in the former district (U. S. v. Jordan, 22 F. (2nd) 702). It may be had in the district where the conspiracy was formed (U. S. v. Wells, 192 F. 870, certiorari denied 225 U. S. 714, 32 S. Ct. 842, 56 L. Ed. 1269; DeOrozco v. U. S. (C. C. A. Tex.; 916) 237 F. 1008; Gayon v. McCarty, 252 U. S. 172, 40 S. Ct. 244, 64 L. Ed. 513), or in any state and district where an overt act was performed, (Brown v. Elliot 225

U. S. 392, 32 S. Ct. 812, 56 L. Ed. 1136; United States v. Reddin 193 F. 798; Costal v. U. S. 13 Fed. (2nd) 843; Shea v. U. S. 236 F. 97; U. S. v. Linton 223 F. 677; U. S. v. Burke 218 F. 83; Tillinghast v. Richards 233 F. 710, since not only the unlawful conspiracy is necessary to the commission of the offense, but that one or more of the parties do an "act to effect" its object, and, when such act is done, "each of the parties to such conspiracy" becomes liable. (18 U. S. C. A. Sec. 88 (Cr. Code Sec. 27). The doing of the overt act renders applicable, where the place of the overt act and of the entry into the unlawful combination are in different judicial districts, the statute, (28 U. S. C. A. Sec. 103 (Jud. Code Sec. 42.) which creates a double jurisdiction (Venue), where an offense against the United States is begun in one district and is completed in another. (Hyde v. U. S. 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114 Ann Cas. 1914A. 614). In other words prosecution for conspiracy may be maintained either in the district in which the conspiracy was entered into or in any district in which an act has been done to effectuate the object of the conspiracy. Hyde v. Shine 199 U. S. 62, 25 S. C. 760, 50 L. Ed. 90; Joplin Mercantile Co. v. U. S. 236 U S. 531, 35 S. Ct. 291, 59 L. Ed. 705; Shea v. U. S. 236 F. 97 Grayson v. U. S. 272 F. 553, certiorari denied 257 U. S. 637, 42 S. Ct. 49, 66 L. Ed. 409; Chew v. U. S. 9 F. (2nd) 348; U. S. ex rel Tassell v. Matheus 11F. (2nd) 53; Ford v. U. S. 10 F. (2nd) 339 affirmed 273 U. S. 593, 47 U. S. Ct. 531, 71 L. Ed. 793; Arnold v. Weil 157 F. 492; U. S. v. Baker, 243 F. 741). So, a conspiracy to do an unlawful act, formed in one district, and in part executed there, is punishable in that district, though it was consumated in other parts of the United States. U. S. v. Noblom (C. C. La. 1878) Fed. Cas. No. 15, 896. Whether or not the accused, or any of the parties to the conspiracy, ever actually was personally within the district of trial, may be immaterial to the question of venue, if an overt act has been committed within the district charged in the indictment, (complaint) U. S. v. Newton 52

F. 275) or if the conspiracy was entered into, and had its headquarters, in the district of trial. Hugh's Federal Practice Sec. 6849.

(c) Common Law Offenses.

A crime is "cognizable under the authority of the United States" when it is triable in its courts by virtue of its laws. (U. S. v. Lewis 36 F. 449) Criminal cases are included (Tennessee v. Davis 100 U. S. 257, 25 L. Ed. 648; San Mateo County v. Southern Pac. R. Co. 13 F. 145) in the term "all cases" arising under the Constitution and the laws of the U. S. and treaties made under their authority, to which the judicial power of the United States extends. (Constitution of the United States Art. 3, Sec. 2, Cl. 1) The laws of the United States are: (1) The Constitution and Statutes of the United States; (2) All treaties made under the authority of the United States; and (3) the Laws of Nations. Hugh's Federal Practice Vol. 9, Cha. 105. Sec. 6524.

(d) The suits, of which the District Courts have jurisdiction as authorized by law to be brought by any person to redress the deprivation, under color of any state law, of any right privilege, (Marcus Brown Holding Co. v. Pollak 272 F. 137; Crandall v. Nevada, 6 Wall. 36, 18 L. Ed. 745; others are enumerated in the Slaughter House cases 16 Wall. 36, 21 L. Ed. 394).

They are comprehended under the general head of Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, (Corfield v. Coryell, Fed. Case No. 3, 230) or immunity, secured by the Federal Constitution, or of any right secured by a federal statute providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States, refer to civil rights only: (Cruickshank v. Bedwell 176 U. S. 73, 20 S. Ct. 280, 44 L. Ed. 377) that is to say civil rights derived from the Constitution or some statute of the United States. Simpson v. Geary 204 F. 507. Hugh's Federal Practice Vol. 3. Sec. 904.

Wherefore the plaintiff demands:

(a) This Honorable Court should not entertain defendants' Motion to dismiss the Complaint;

(b) That this Court deny the said Motion to Dismiss the Complaint with Costs to the plaintiff;

(c) That the defendants be directed to file their Answer within the time prescribed by the Federal Rules of Civil Procedure;

(d) That the defendants be required to get together and appoint one single agency or party to appear and defend for them all;

(e) That the plaintiff have and recover his costs on the said Motions.

Respectfully,
NICHOLAS J. CURTIS, LL. B.
Plaintiff Appearing in Person,
No. 211 Woodside Ave.
Ridgewood, New Jersey.

Subscribed and sworn to before me this ..... day of April, 1940.
Helen Tinbar, Notary Public.
To Minton & Rogers,
Trenton Trust Bldg.
Trenton, New Jersey.

I do hereby certify that on this 26th day of April, 1940, I personally delivered a copy of the foregoing Affidavit to the Law Offices of Minton and Rogers and handed it to their Secretary.

NICHOLAS J. CURTIS
Plaintiff Appearing in Person

Dated this 26th day of April, 1940.

To the Honorable Clerk and Deputy Clerk
of the Above-entitled Court.

It came to my attention and made manifest that the defendants Utah Fuel Company et als. and their attorneys

have resorted to the same practice which they used in the first action filed against them here in this Court not withstanding the provisions of the New Federal Rules for the District Courts of the United States.

I have been served with a copy of a Motion similar to that which they tried the former suit here and they have made it returnable before the same judge, namely the Honorable Phillip Forman. It would seem to me that there will be another and further repetitions of the practices on that demurrer and the dismissal of that action unjustly.

The Federal Rules abolished the practice upon which the former suit against these defendants was dismissed and made to be construed to secure the just, speedy, and inexpensive determination of every action.

For the foregoing reasons and for the reasons that these defendants have consumed 23 years of my life time with worthless talks and criminal charges I Petition you to have these Motions set to come up before another judge than Judge Forman. Judge Walker or Judge Avis or either one of them is acceptable to me.

Apologizing herewith I say that it is my duty to myself and pray that this case will not be given to Judge Forman.

Respectfully,

NICHOLAS J. CURTIS,
Plaintiff.

To Minton & Rogers,
Trenton Trust Bldg.

To the Honorable Clerk and Deputy Clerk
of the Above-entitled Court.

You will please enter the Default of Doctor E. R. Murphy and Charles W. Kutz, Defendants in the suit and now in Default.

Respectfully,

NICHOLAS J. CURTIS,
Plaintiff, No. 211 Woodside Ave.,
Ridgewood, New Jersey.

Mailed to the Clerk in the morning
of May 3, 1940,
NICHOLAS J. CURTIS,
Plaintiff.

To the Honorable Clerk and
Deputy Clerk of the Above Entitled Court.

You will please enter the default of the defendant Mark Tuttle now in Default of a pleading.

Respectfully,
NICHOLAS J. CURTIS, LL.B.,
Plaintiff Appearing in Person,
No. 211 Woodside Ave.,
Ridgewood, New Jersey.

Dated May 4, 1940.

AMENDMENT TO THE COMPLAINT

To the Hon. Judges of the Above
Entitled Court:

Nicholas J. Curtis, a citizen and subject of the Kingdom of Greece and a resident of Ridgewood, Bergen County, State of New Jersey, the plaintiff in the Original Complaint in this cause, by way of this Amendment to the Original Complaint, files this his Amendment to the Complaint in this cause and shows as follows:

1. That in the first suit filed here against defendant, Utah Fuel Company, et als. No. 6468, in order to present a correct Bill of Complaint, he appealed to the Y. W. C. A. and Ridgewood School of Secretarial for a good typist to type the complaint and to transcribe the Exhibits. There was sent a woman and she went to work and typed the complaint and transcribed the Exhibits. Plaintiff gave credit to her work.

2. Following the names given in the first complaint plaintiff read the name of the defendant Dr. J. C. Paul as one of the persons who should be made a party defendant in the present suit.

3. The U. S. Marshal for the District of Utah received

the Summons and Complaint and went to serve Dr. J. C. Paul but he was unable to locate such person and made return "unknown".

4. Plaintiff immediately compared his old complaint and finds the name of the defendant Dr. L. J. Paul changed to J. C. Paul. This said change appears on the 47th page of the old complaint and on the 3rd page of Exhibit E. See the Original on file in Court.

5. A further comparison of the Original Exhibit E as received from the Clerk of 3rd Judicial District Court of the State of Utah, Salt Lake County, Utah, it is shown that the true initials of said defendant are L. J. Paul Dr.

6. A further search conducted by the plaintiff in person in the New York City Library it is shown by the City Directory of Salt Lake City and the Mountain Tel. & Tel. Co. Directory of the same city that the defendant's true name is Dr. Leslie J. Paul, Phys. & Surg., Boston Bldg.; residence 268 Douglas, Tel. Hyland 2953.

7. That while he was imprisoned in the Utah State Hospital for the Criminal Insane there was appointed as assistant doctor the defendant named in the printed complaint as Dr. Arthur Taylor. There he was introduced and addressed as Dr. Arthur Taylor and was known as thus to the end of the day he in person deported the above-named plaintiff.

8. He is the person who made out the false certificate which is embodied on the 29th page of the printed complaint. He is the defendant who bought the railroad and steamship tickets to deport the above named plaintiff and whom the U. S. Marshal reported "unknown".

9. Thereupon plaintiff searched the Provo City, Utah, Mountain Tel. & Tel. Co.'s Directory in New York City and it is therein clear that the defendant's true name is Dr. Frederick W. Taylor, 37 Center; residence 147 Univ. Ave. The Univ. here stands for University (B. Y. U.).

10. Plaintiff further appealed to the Governor of the State of Utah for the true name of said Dr. Taylor, and the

Governor answered and gave the name as given above in par. 9. Governor's letter presented to Judge Walker and the same was made a part of the Record. See it.

11. The defendant Dr. Fred. W. Taylor realized fully what he was doing and dreaded the consequences of his acts and wickedly went under assumed names; and when he was made by Mr. C. W. Simmons to sign the Certificate embodied in page 29th he signed the name of Dr. Frederick Dunn; and upon objections made by Mr. C. W. Simmons he pleaded that such was the understanding between the two. Hence the Second Error.

Wherefore, plaintiff prays:

1. That this Amendment to the Original Complaint so made to correct the two errors thus made, be filed in the Record and made a part of the Original.

2. That Summonses issue thereupon immediately against:

(a) Dr. Leslie J. Paul, Boston Bldg., Salt Lake City, Utah, res. 258 Douglas, same city and State; And

(b) Dr. Fred. W. Taylor, Offices and Clinic, 37 Center, res. 147 Univ. Ave., Provo, Utah County, Utah. And

3. That the said two defendants be required to answer both this Amendment to the Original Complaint; and the Original Complaint.

NICHOLAS J. CURTIS, LL.B.,
Plaintiff Appearing in Person,
No. 211 Woodside Ave.,
Ridgewood, New Jersey.

Subscribed and sworn to before me this
..... day of May, 1940.

.....
Notary Public.

MARSHAL'S RETURN OF SERVICE OF SUMMONS

I, Gilbert Mecham, United States Marshal for the District of Utah, hereby certify that I received the within attached summons at Salt Lake City, Utah, the 22nd day of May, 1940, and served the same by leaving a true and correct copy of the summons and complaint, duly indorsed and dated

with each of the following defendants,

May 22, 1940, Dr. Leslie J. Paul, personally

May 22, 1940, Bamberger Coal Company by Wm. D. Eldridge, Vice President & Gen. Mgr.

at Salt Lake City, Utah.

May 24, 1940, Dr. Frederick Taylor, personally at Provo, Utah.

Signed at Salt Lake City, Utah, this 28th day of May, 1940.

GILBERT MECHAM,
United States Marshal.

By.....
Chief deputy.

3 services @ $2.00.....$6.00
45 mi. @ 6c 2.70

Total $8.70

To the Clerk and
Deputy Clerk of Said Court.
Honorable Sirs:

You will please enter the Default of:

1. Dr. Fred W. Taylor;
2. Dr. Leslie J. Paul; and
3. The Bamberger Coal Company

Yours truly,
NICHOLAS J. CURTIS, LL.B.,
Temporary Address,
No. 76 Pine St.,
Poughkeepsie, N. Y.

Dated the 17th day of June, 1940.

APPLICATION FOR ENTRY OF JUDGMENT

To the Clerk and Deputy Clerk of
Said Court.
Sirs:

1. In this suit the defendants were served in accordance with the law and the Rules of Civil Procedure for the District Courts of the United States, Adopted by the Supreme

Court of the United States pursuant to the Act of June 19, 1934, Ch. 651.

2. The crucial bases of the suit are the acts and conduct of the defendant Dr. R. E. Murphy (E. R. Murphy) for whose acts and conducts the defendant Utah Fuel Company and controlled companies are responsible. See Ruling of Three Judges (Commissioners) set out in the second paragraph on page 106 of printed Complaint.

3. The Certificate of Gilbert Mecham, United States Marshal for the district of Utah shows that the said defendant Dr. E. R. Murphy was duly served with the writ of Summons and copy of the Complaint on the 8th day of April, 1940.

5. The Writ of Summons so served provides:

To the above-named defendant:

You are hereby summoned and required to serve upon Nicholas J. Curtis, plaintiff, whose address is 211 Woodside Ave., Ridgewood, N. J., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

.....

Clerk of Court.

5. Up to the 2nd day of May, 1940, there were no pleading filed by or in behalf of the defendant Dr. E. R. Murphy and on said date the plaintiff in this suit mailed to the Clerk of this court the following praecipe: (Title & Style of Court, etc.)

To the honorable Clerk and Deputy Clerk of the above-entitled Court.

You will please enter the Default of Doctor E. R. Murphy and Charles W. Kutz, Defendants in the suit and now in Default.

Respectfully,

(signed) NICHOLAS J. CURTIS.

(date, etc.)

Up to this date June 28, 1940, no objection has ever been made by or in behalf of the defendant Dr. E. R. Murphy with respect to the entry of default. The default is now conclusive and final.

6. The Record of the case further shows that there were no pleading of any kind filed by or in behalf of the following defendants:

1. Charles W. Kutz; 2. Mark Tuttle; 3. D. O. Larson; 4. Dr. Fred. W. Taylor; 5. Dr. Leslie J. Paul; and 6. Bamberger Coal Company.

There are seven parties defendants in complete and final default.

7. The defendant Utah Fuel Company made no objection to the entry of the default against Dr. E. R. Murphy, its own officer and agent for whose acts and conduct it is responsible but filed a separate motion in form and substance of a general demurrer to the declaration.

8. Thereupon the plaintiff filed an opposing Affidavit consisting of 25 pages and personally delivered a true carbon copy of the same to the law offices of Minton and Rogers, Trenton Trust Bldg., Trenton, N. J., and personally handed it to their Secretary at their Desk. To this said Motion the Attorneys of the Utah Fuel Company added the following pleading:

(Title of Court, etc.)

To Nicholas J. Curtis:

Take notice that I hereby enter a Special Appearance on behalf of the defendants Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Maybe), and W. D. Sutton; and that on Friday, May 3, 1940, at 10:30 o'clock in the forenoon, (D.S.T.), or as soon thereafter as counsel may be heard, in the United States District Court rooms, Post Office Building, Trenton, N. J., I will move to quash service of the subpoenas made upon the above named defendants. Respectfully, Minton & Rogers, (etc.)

9. The said Motion came on to be heard and argued before Judge Walker at Newark, N. J., on the 6th day of May, 1940.

H. Collin Minton, Jr., et al appeared there and answered the call of the Calendar and on the call of the case he threw down his own copies and state to the Court that he submits his motion as it is, No argument; No Affidavit—I will plead my case on the moving pictures—. Upon these remarks so made to the Court the Court directed the said H. Collin Minton, Jr., to answer plaintiff's Affidavit; then and there the said H. C. Minton, Jr., stated to the Court that he has had no affidavit to answer; then and there this plaintiff spoke out and stated to said H. C. Minton, Jr., the facts set forth above in par. 8 as to the copy of the Affidavit so served; then the said H. C. Minton, Jr., thanked this plaintiff and advised the Court that he, Minton, will answer the affidavit. No such an answer were ever filed. It follows, therefore, that the defendants named in the Notice set out above in Par. 8, Utah Fuel Company, and H. Collin Minton, Jr., are all in default.

10. This plaintiff applied to the Court by Notice of Motion for Commission to Examine witnesses out of the United States and served upon Minton & Rogers attorneys of Record true and correct copy of the notice, Commission, written Interrogatories, etc. Rule 3(a) & (3) provide:

(a) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(3) Objections to the form of written interrogatories submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

Rule 31 (a) Provides:

(a) SERVING INTERROGATORIES; NOTICE. A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to

be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories (etc.) . . .

11. No Appearance. No Objection made. And no pleading of any kind has ever been made and filed. In all plaintiff made four such applications, three to be taken in the State of Utah and one in the Kingdom of Greece. Of All Four Applications so made the plaintiff served, full, true and correct copies upon the Attorneys of Record together with notice to the effect that the same have been submitted to the Court. No Objection. No Answer. No Appearance. William H. Folland, defendant, was then a lawyer and posed to be a person of unequal legal learning. Now he cannot defend himself. The Utah Fuel Company employs about one half dozen lawyers, more or less. Now they cannot defend said corporation. They have no defense to the suit. Any move by them will expose them further more.

12. The Federal Rules of Civil Procedure Provide:

Rule 55. DEFAULT.

(a) ENTRY. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount and costs due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; . . . Notes of Advisory Committee on Rules. 1. This represents

the joining of the equity decree pro confesso (Equity Rule 12, Issue of subpoena—Time; Rules 16; 17; 29; 31) and the judgment by default now governed by U. S. C. Title 28, Sec. 724. . . . Rule 21. . . . Any claim against a party may be severed and proceeded with separately.

Revised Statutes of Utah 1933. Chapter 28.

JUDGMENT BY DEFAULT.

1. When Authorized.

Judgment may be had if the defendant fails to answer the complaint, as follows:

(1) In an action arising upon contract for the recovery of money or damages only, if no answer, demurrer or motion has been filed with the clerk of the Court within the time specified in the summons, or such further time as may have been granted, and the complaint and proof of service of Summons shall have been filed, the Clerk, upon application of the plaintiff must enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the complaint, including the costs against the defendant, or against one or more of several defendants, in the case provided for in section 104-5-15 . . . 104-5-17. In action on Joint or Several Contract.—Failure to serve all Defendants, Effect. When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

Default—Clerk should enter—Presumption. Utah Association of Credit Men v. Bowman, 38 U. 328, 113 p. 63; Franklin v. Thatcher 53 U. 387, 178 p. 922.

13. The defendant Utah Fuel Company is a self insurer; so is its controlling Company, the Bamberger Coal and Grain Company. They have given sufficient Bond to take care of every case against them. Please see R. S. of Utah. It is over in Newark, N. J., before Judge Walker. It is only fair that these two corporations be called upon to pay this judgment. Dr. Frances Bascom is dead; Dr. Robert Allison

is dead; and Dr. E. R. Murphy may have nothing to pay the judgment with.

The duty to pay and take care of this case was the duty of the said corporation or corporations.

Wherefore, plaintiff prays that judgment be entered against the Utah Fuel Company and the Bamberger Coal Company in the sum of Six Thousand Forty-one (fractions left out) Dollars ($6,341.11) and threefold that amount, to wit: Nineteen Thousand Twenty-three ($19,023.00) on the first Count. Interest for the six months of the year 1940 is hereby waived—provided—the defendants proceed timely and regularly and pay the judgment. In case of further groundless objections and practice the interest is to run.

Respectfully,

NICHOLAS J. CURTIS, LL.B.,
Plaintiff Appearing in Person,
No. 211 Woodside Ave., Ridgewood, N. J.

Subscribed and sworn to before me
this 28th day of June, 1940.

.....
Notary Public.

NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND PRAYER FOR RELIEF

To Minton and Rogers, Attorneys for Utah Fuel Co. et al Defendant
Trenton Trust Building, Trenton, N. J.

Please take Notice that the hereto annexed copy of Motion for leave to Amend the prayers for relief is a true and correct copy of the original as filed with the Clerk of the Court and is Noticed to come up for argument on Monday the 8th day of July, 1940, before Judge Thomas Glynn Walker, at the Court Room, Post Office Building, Newark, New Jersey.

NICHOLAS J. CURTIS,
Appearing in Person.

NOTICE OF APPLICATION FOR DEFAULT JUDGMENT

To Minton and Rogers, Attorneys for Defendants Utah Fuel Company, et als
Trenton Trust Building, Trenton, N. J.

PLEASE TAKE NOTICE that an Application for Default Judgment copy of which you are herewith receiving, has been made to the Clerk of this Court this 1st day of July, 1940.

NICHOLAS J. CURTIS, LL.B.,
Plaintiff appearing in person,
No. 211 Woodside Ave.,
Ridgewood, N. J.

NOTICE OF MOTION TO STRIKE THE COMPLAINT

To Nicholas J. Curtis, LL.B.:

PLEASE TAKE NOTICE that I shall apply on behalf of the defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, to the Honorable Judges of the United States District Court for the District of New Jersey, or such Judge thereof as shall hear motions, on Monday, the twenty-second day of April, 1940, at the Chambers of said Court, in the Post Office Building, at Federal Square, in the City of Newark, New Jersey, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order to strike out the Complaint filed by you and to quash the summons issued thereon so far as these moving defendants are concerned, on the following grounds:

1. Because the Complaint lacks certainty and is not so framed as to reasonably apprise defendants of the elements of the case to be made against them.

2. Because the Complaint misjoins parties and causes of action; it contains several causes of action against several defendants and by its allegations shows that the acts and transactions of these moving defendants had nothing whatever to do with the acts and transactions or series of trans-

actions of the other defendants, namely, Utah Fuel Company, its doctors and agents.

3. Because the Complaint fails, so far as these moving defendants are concerned, to bring the case within the jurisdiction of this court.

(a) The amount in controversy as shown by the Complaint is far less than $3000.00. The Second Count alleges that these defendants are indebted to plaintiff in the sum of $958.65 and for an explanation of same refers to Exhibit B and paragraphs 36 and 37 of the Complaint. Paragraph 36 alleges that there was due and owing to plaintiff for wages in October, 1925, $314.28, and $33.64 over time, making a total of $347.92. Exhibit B shows that plaintiff computed interest on this amount at eight per cent, under the Utah Statute (the transaction being a New Jersey one) and thus arrives at $958.65.

(b) The actual residences of plaintiff and these defendants affords no ground for this court's jurisdiction. The Complaint alleges that plaintiff is a citizen of Greece and a resident of Ridgewood, New Jersey, and that all these moving defendants are residents and citizens of Paterson, New Jersey.

4. Because plaintiff is estopped by his own acts from bringing this suit in this court. The 22nd count of the Complaint (page 32) alleges that he brought suit for said alleged wages and over time, amounting to said sum of $347.92, in the year 1925, in the Paterson District Court; that his case was heard by Judge McDermott and a judgment rendered in his favor in the sum of $. (The court records show this sum to be $43.00 debt and $5.75 costs). This count further alleges that plaintiff was dissatisfied with said judgment, obtained a Rule to Show Cause thereon, which was argued and dismissed, and further alleges that by said judgment of the Paterson District Court, he was defrauded out of his honestly earned wages and over time of $347.92.

5. Because so far as these defendants are concerned, the matter is res adjudicata; a judgment in suit by plaintiff hav-

ing been rendered in the matter of his claim for wages and over time in the Paterson District Court in 1925 (see allegations of Complaint mentioned under last reason); and further because the elimination of the Second Count of this Complaint as elaborated upon in paragraphs 36 to 39 inclusive, (Counts 21 and 22) leaves no cause of action in any of the remaining counts against these defendants.

6. Because so far as these defendants are concerned, the Complaint on its face clearly shows that the Statute of Limitations has run, either on the theory of debt or on the theory of conspiracy. A civil suit for conspiracy is an action on case (Kamm, Inc. vs. Flink, et als., 175 Atl. 62). The New Jersey statute of limitations in actions of debt or on case in six years and we find no federal act in reference to such limitations.

Dated April 15th, 1940.

ADDISON P. ROSENKRANS,
Attorney for Defendants,
Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans.

OPPOSING AFFIDAVIT

Before me, the undersigned authority, personally came and appeared Nicholas J. Curtis, who, being first duly sworn, deposes and says:

That he is the complainant herein; that he has prepared, drafted and typed the foregoing Opposing Affidavit and personally knows the facts and laws set forth herein and after, and finds and presents to the Honorable Court as follows:

The plaintiff comes and moves this Court to deny the Motion to Strike the Complaint and to Quash the Service of Summons herein filed by said Addison P. Rosenkrans, appearing as the attorney for the said moving defendants because:

1. The said motion has been signed with intent to defeat the purpose of the Rules of Civil Procedure for the District Courts of the United States. This said motion is a wilful

violation of the provisions of Rule 11 of said Federal Rules. The attorney so filing it and signing it should be subjected to the appropriate disciplinary action together with costs and the denying of said motion. R. 11.

(a) These said rules govern the procedure in the district Courts of the United States in all suits of Civil Nature whether cognizable as cases at law or in equity. R. 1.

(b) The defendants said motion to strike the Complaint and quash summons is so issued, signed and filed in the place of a demurrer. Whereas, Demurrers, Pleas, and Exceptions for insufficiency of a pleading should not be used. R. 7 (c).

(c) (Paragraph 1 of said motion reads: Because the Complaint lacks certainty and is not so framed as to reasonably apprise defendants of the elements of the case to be made against them.)

These are not so. There was no time and money left unused in order to bring the facts before the court to in every way, in law and fact, simple, concise and direct to meet the requirements of the provisions of Rule 8 (1).

(d) By the provisions of Rule 8 (1) of said rules there are "no technical forms of pleading or motions required."

(e) If there be any matter in the Complaint which is not averred with sufficient definiteness or particularity to enable the defendants (apprise, they say) properly to prepare their responsive pleading or to prepare for trial they have to apply to the Court for the relief provided by the provisions of Rule 12 (e), which provide that they should move for more definite statement or for bill of particulars. The said paragraph 1 is a demurrer in itself.

(f) The defenses which are made optional to the defendants, which defenses may be made by motion are set out in Rule 12 (b), to wit: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the persons, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted.

(g) Scope of Rules. Construction. The scope of these

rules requires their construction to secure a just, speedy and inexpensive determination of every action. Rule 1. Thomas vs. Goldstone, D. C. N. Y. 1939, 27 Fed. Supp. 297.

(h) These rules were adopted not only to simplify procedure but to relieve rather than add to the burden of the motion judge.

These rules are designed to enable the disposition of a whole controversy of interested parties' conflicting claims, at one time and in one action, provided all parties can be brought before court and matter decided without prejudicing rights of any party. United States to Use and for Benefit of Foster Wheeler Corporation vs. American Surety Co. of New York. D. C. N. Y. 1938. 25 F. Supp. 700.

(i) These rules were designed to simplify court proceedings. Bobrecker vs. Denebeirm, D. M. 1938, 25 Supp. 208.

(j) The purpose of the new rules of civil procedure for District Courts is to avoid technicalities. Rules of Civil Procedure for the District Courts, rules 4 (d), (6), 4 (h), 28 U. S. C. A. following section 723c.—Moore v. City of Lehigh, 29 F. Supp. 39.

2. (Par. 2 of defendants' motion to strike reads:

Because the Complaint misjoins parties and causes of action against defendants and by its allegations shows that the acts and transactions of these moving defendants had nothing whatever to do with the acts and transactions or series of transactions of the other defendants . . .)

(a) To these statements the plaintiff answers and says that the said statements so made and set out in said motion are made with intent to defeat the purposes of the rules and especially of R. 18 (a) (Joinder of Claims and Remedies) providing that there may be a like joinder of claims when there are multiple of parties; (b) of rule 19 (a) which require that persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants;

(c) Of rule 20 (a) providing for Permissive Joinder of Parties, to wit: All persons may join in one action as plain-

tiffs if they assert any right to relief jointly, severally, or in the alternative . . . ; All persons may be joined in one action as defendants if there is asserted against them jointly, severally or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. The defendants need not be interested in defending against all the relief demanded . . . Paragraph (h) of Sec. 1 of this Affidavit on pp. 2-3 is cited here.

(d) In McNally v. Simons et al, D. Ct. S. D. of N. Y. July 19, 1939, Judge Goddard says:

Rule 20 of the new Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c. governs the situation. In substance, that provides that joinder of parties defendant is permissible if the claim or claims alleged in an action arise out of a series of transactions or occurrences and there is any question of law or fact common to all of them which will arise in the action.

This case does arise out of the same series of occurrences and there are a number of common questions of fact and law in issue.

The case of Ader v. Blau, 241 N. Y. 7, 148 N. E. 771, 41 A. L. R. 1216, and cases following it, which denied alternative joinder of causes of action where there is a common question of law or fact, are not in point since the adoption of the new federal rules which govern the procedure in the Federal Courts and this is a matter of procedure.

It is obvious why this defendant would prefer to try his case separately, but doing so will result in no substantial prejudice to him; on the other hand delay, expenses and inconvenience to witnesses and attorneys concerned will be considerably lessened by trying the entire matter at the same time. Furthermore, as Judge Paterson said in Julius Klugman's Sons v. Oceanic Steam Nav. Co., 42 F. 2nd 461, "Otherwise, it might happen that the complaint was dismissed as to a defendant and that later on a remaining de-

fendant presented clear proof pointing toward the liability of the defendant who was then no longer in the case", 42 F. page 463.

The Defendant's Motion is denied.

Settle Order on Notice.

(e) Constructive presence. An individual may commit a crime within a state in which he is not physically present at the time the crime is committed. There may be a constructive presence in a state, distinct from a personal presence, by which a crime may be consummated. And if it may be consummated, may be punished by an exercise of jurisdiction; i.e., a person committing it may be brought to trial and condemnation. Hugh's Federal Practice, Sec. 6842, citing Hyde v. United States, 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; Moran v. U. S. (C. C. A. Tenn. 1920) holding that there may be a constructive presence in a state, etc.

A crime may be consummated in a state other than that where the offender personally happens to be, and so be punishable in the former place where the accused is constructively present, (Grayson v. United States, (C. C. A. Tenn. 1921) 272 F. 553, certiorari denied 257 U. S. 637, 42 S. Ct. 49, 66 L. Ed. 409; Burton v. U. S. 202 U. S. 344, 26 S. Ct. 688, 50 L. Ed. 1057.

(f) Persons Liable.

One who, learning of a conspiracy or unlawful combination after it is formed, joins it then, or knowingly aids in the execution of the scheme, and shares in its profits, becomes, from that time, as much a co-conspirator as if he were one of the originators of the unlawful scheme. Hughs Federal Practice, Sec. 1776. Citing United States vs. Lake Shore & M. S. R. Co. 203 F. 295.

These answer the statements made by the moving defendants to the effect that their acts had nothing whatever to do with the acts and transactions or series of transactions of the other defendants . . .

(g) Conspiracy. The Sixth Amendment requires the ac-

cused to be tried, not where he resides, but in the district "wherein the crime shall have been committed", and, where the indictment, Complaint, charges a conspiracy to have been committed in a certain district, as well as in other districts including that in which the defendant resides, the trial may be had in the former district. (United States v. Jordan, 22 F. (2nd) 702). It may be had in the district where the conspiracy was formed, (U. S. v. Wells, 192 F. 870, certiorari denied 225 U. S. 714, 32 S. Ct. 842, 56 L. Ed. 1269; De Orozco v. United States, 237 F. 1008; Grayson vs. McCarthy, 252 U. S. 171, 40 S. Ct. 244, 64 L. Ed. 513.) or in any state and district where an overt act was performed, (Brown v. Elliot 225 U. S. 392, 32 S. Ct. 812, 56 L. Ed. 1136; U. S. v. Reddin 193 F. 798; Costal v. U. S. 13 F. (2nd) 843; Shea v. United States, 236 F. 97; U. S. v. Linton, 223 F. 677; U. S. v. Burke, 218 F. 83; Tillinghast v. Richards 233 F. 710, since not only the unlawful conspiracy is necessary to the commission of the offense, but that one or more of the parties do an "act to effect" its object, and when such act is done, "each of the parties to such conspiracy" become liable. 18 U. S. C. A. Sec. 88 (Cr. Code, Sec. 37). The doing of the overt act renders applicable, where the place of the overt act and of the entry into the unlawful combination are in different judicial districts, the statute, (28 U. S. C. A. Sec. 103 (Jud. Code Sec. 42) which creates a double jurisdiction (venue), where an offense against the United States is begun in one district and is completed in another. (Hyde v. U. S. 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114) In other words prosecution for conspiracy may be maintained either in the district in which the conspiracy was entered into or in any district in which an act has been done to effectuate the object of the conspiracy. Hyde v. Shine 199 U. S. 62, 25 S. Ct. 760, 50 L. Ed. 90; Joplin Mercantile Co. v. U. S., 236 U. S. 531, 35 S. Ct. 291, 59 L. Ed. 705; Shea v. United States, 239 F. 97; Grayson v. United States 272 F. 553, certiorari denied 257 U. S. 637, 42 S. Ct. 49, 66 L. Ed. 409; Chew v. United States, 9 F. (2nd) 348; U. S. ex rel Tassel v. Mattheus 11 F. (2nd) 53; Ford v. U. S., 10 F. (2nd) 339, affirmed 273 U. S. 593, 47 S.

Ct. 531, 71 L. Ed. 793; Arnold v. Eeil 151 F. 429; U. S. v. Baker, 243, F. 741;

(h) Misjoinder of parties is not ground for dismissal of an action. Rule 21.

(i) The object of the action is the adjudication of claims which did and do affect specific property involved, namely, the recovery of the claims set out on Exhibits A and B, which have been defeated by the concerted action of the defendants. R. 23 (2), (3).

(j) The character of the right sought to be enforced against the defendants in this suit is several, and there are questions of law and fact affecting the several rights and a common relief is sought. The common relief is the damages demanded against all the defendants and the said sums so defrauded by their concerted action.

3. (Par. 3 of the Motion to Strike reads: Because the complaint fails, so far as these moving defendants are concerned, to bring the case within the jurisdiction of this Court)

Paragraphs (g), (h), (i), (j) first above set out on pages 5-6 of this Opposing Affidavit are also pleaded here against the statements made and set out in said paragraph. The Several sections of Federal laws and of the Federal Constitution are cited on page 3 of the printed Complaint in accordance with the requirements of Official Form Numbered 2 as set out on pp. 106-107 of the Federal Rules.

(a) Proceedings in vindication of civil rights.—Tit. 28, Sec. 729. (See pp. 7-8, R. P. above).

The provisions of the said section authorize the district court to exercise all the laws of the United States to protect the rights protected by the said chapter 3 of title 8 and title 18.

(b) Equal Rights Under the Law. U. S. C. A., Tit. 8, Sec. 41.

All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings

for the security of persons and property as is enjoyed by white citizens, and shall be subjected to like punishments, pains, penalties, taxes, licenses, and exactions of every kind and to no other. (R. S. Sec. 1977. UNITED STATES CONSTITUTION.

(c) CIVIL ACTION FOR DEPRIVATION OF RIGHTS.

(d) The suits, of which the District Courts have jurisdiction as authorized by law to be brought by any person to redress the deprivation, under color of any state law, of any right, privilege, (Marcus Brown Holding Co. v. Pollak, 272 F. 137; Crandall v. Nevada, 6 Wall. 36, 18 L. Ed. 745; Others are enumerated in the Slaughter House Cases 16 Wall. 36, 21 L. Ed. 394.)

They are comprehended under the general heads of:

Protection by the government; the enjoyment of life and liberty with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, (Corfield v. Coryell Federal Case No. 3.230) or immunity, secured by the Federal Constitution, or of any right secured by a federal statute providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States, refer to civil rights only; (Cruickshank v. Bedwell, 176 U. S. 73, 20 S. Ct. 280, 44 L. Ed. 377) that is to say, civil rights derived from the Constitution or some statute of the United States. Simpson v. Geary, 204 F. 507.

Hugh's Federal Practice, Vol. 3, Sec. 1904.

(e) Title 8, Chapter 3, Sec. 47, (1), (2), (3).

It is unnecessary to copy all three paragraphs of the said Section 47. Answering the defendants' statements (par. 3 (a)) as to the amount in controversy the plaintiff says par. (3) of said section reads: (see p. above).

(f) In order to establish a conspiracy to commit an offense against the United States in violation of this section, there must not only be an agreement or combination to commit a crime or unlawful purpose, but also an overt act apart from the conspiracy, done to carry into effect the object of the

original combination. United States v. Cole, 153 T. 801.

(g) The claim against two of these moving defendants was $314.28 and $33.64 over time making a total of $347.92. This computation was made by Mr. John Gall, then acting as the attorney for the plaintiff. These said defendants, plotting to defraud this plaintiff of the moneys they owed to him went to work and the defendant Nicholas J. Pappas disappeared and will not return to the restaurant under any circumstances. The defendant Helen N. Pappas went to work and acted as chamber maid into the room wherein this plaintiff was sleeping at a time in which she had no business to be there. There she searched the few personal belongings which this plaintiff have had with him and there she located a copy of a printed brief of a Petition for Writ of Mandamus in the matter of this plaintiff against the Honorable Tillman T. Johnson, district judge of the U. S. Dist. Ct. for the District of Utah. The defendants in that case were the defendant Utah Fuel Company and others. Then and there she talked and pleaded with this plaintiff to give her a copy saying that she love it so much, that she wished to remember the plaintiff for his learning, and that she will keep the same as remembrance. Having no reason to suspect that she, the said defendant, was in search for evidence so that they can defraud the plaintiff out of his earnings he gave her a copy. Then and there she ran to the defendant William V. Rosenkrans, their attorney and submitted said copy to him. In turn the defendant Wm. V. Rosenkrans ran to Judge McDermott and submitted it and at the trial he, Wm. V. Rosenkrans, in open court, confronted this plaintiff with said copy so given to the said defendant, Helen N. Pappas. At the same time, they, the said moving defendants, being partners in crime, bootleggers have had with them the defendant Harry Sussman as their witness against the claim of wages owed by said Pappases and had him commit corrupt and wilful perjury. The plaintiff was then powerless to say anything. He was powerless to expose the conspiracy and his two attorneys, Mr. John Gall and Mr. David Cohn, were dumbfounded by the statements made by Judge McDermott

and powerless to do anything to recover the wages of this plaintiff.

(h) In other words these defendants pleaded the lawsuit of this plaintiff against the Utah Fuel Company and presented its files to the Paterson District Court and charged the plaintiff as being a person of dishonest character and suing people here and there unjustly. It is now well settled that that suit was meritorious. Please see the authorities annexed to and made parts of the Complaint.

(i) The foregoing facts are mostly overt acts in furtherance of the object of the conspiracy which was first formed in Utah or in the State of Utah and carried out throughout the Country.

(j) By their said acts or series of acts these moving defendants, directly and indirectly, deprived this plaintiff of the equal protection of the laws, or of equal privileges and immunities under the laws. By their said infernal acts prevented or hindered the Paterson District Court, a constituted authority of the State of New Jersey, from giving or securing to this plaintiff the equal protection of the laws.

These are offenses cognizable by the provisions of said section 47 (3) and are offenses against the United States. All these moving defendants engaged themselves therein and did do and caused to be done all said acts in furtherance of the object of said conspiracy whereby this plaintiff was injured in his person and property. It follows, therefore, that the action against these moving defendants for the recovery of damages occasioned by such injury or deprivation is expressively authorized by the provisions of the same section irrespective of whether the amount in controversy is or is not less than or over and above $3000.00.

Thus the statements made and set forth in paragraph 3 of the motion to strike are groundless and without merits to support them and made to defeat the ends of justice and the administration of the laws by this Court.

(k) Common Law Offenses. Hugh's Fed. Pr. Sec. 6524. Ch. 105. A crime is "cognizable under the authority of the United States" when it is triable in its courts by virtue of

its laws. (United States v. Lewis 36 F. 449) Criminal cases are included (Tennessee v. Davis 100 U. S. 257, 25 L. Ed. 648; San Mateo County v. Southern Pac. R. Co. 13 F. 145) in the term "all cases" arising under the Constitution and the laws of the United States and treaties made under the authority of the United States, to which the judicial power of the United States extends. (Constitution of the United States, Art. 3, Sec. 2, cl. 1). The laws of the United States are: (1) The Constitution and Statutes of the United States; (2) All treaties made under the authority of the United States; and (3) the Laws of Nations.

(l) As to the Statements set out in paragraph 3 (b) of said Motion to Strike, to wit:

> The actual residence of plaintiff and these defendants affords no ground for this court's jurisdiction. The Complaint alleges that plaintiff is a citizen of Greece and a resident of Ridgewood, New Jersey, and that all these moving defendants are residents and citizens of Paterson, New Jersey.

These statements are sham or false because the citizenship of these moving defendants is set out on the second paragraph of page 3 of the Complaint, to wit: on information and belief all the other defendants are citizens and residents of the State of New Jersey . . . The actual citizenship and residence of plaintiff and these said moving defendants do afford grounds for this court's jurisdiction. The complaint does allege that the plaintiff is a subject of the Kingdom of Greece and a resident of Ridgewood, N. J. The plaintiff alleges that he is an alien residing within the United States and under the law (Title 28, Sec. 41 (1) (c)) the suit is between citizens of a State and foreign States, citizens or subjects. Under the rules of decisions, to wit:

The same title. No. 5547. Law. Dist. Ct. of the U. S. D. of Ut. The very same case. (See p. above).

5. (Par. 4 of Defendants' Motion to Strike, to wit: Because plaintiff is estopped by his own acts from bringing this suit in this court . . .)

To these statements the plaintiff says that the judgment

of the Paterson District Court was devised and contrived of malice, fraud, (perjury is fraud) covin, confusion or guile and is clearly and utterly void. Laws of New Jersey 1709-1861, 1755-1868 Section 307 p. 327.

(a) A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it, and all claims flown out of it are void.

Freeman on Judgment. Section 117.

There is the plaintiff's answer to the defendants' statements set out in paragraph numbered 4. See also plaintiff's answers set out on Par. three and read in (e), (f), (g) on pp. 8-9 above; (h), (i) on page 9; (j), (k) page 10.

5. (Par. 5 of defendants' Motion. Res adjudicata. . . .)

The plaintiff's answer is the same as in the three paragraphs above, and further says, to wit:

ANY JUDGMENT DEVISED AND CONTRIVED OF MALICE, FRAUD, (PERJURY IS FRAUD) COVIN, CONFUSION OR GUILE IS CLEARLY AND UTTERLY VOID. LAWS OF NEW JERSEY. As above.

(a) Perjury and subornation of perjury a high misdemeanor.

(P. L. 1898, p. 798; State v. Beard, 24 L. 455.)

(b) The judgment of the Paterson District Court was devised and contrived by the defendants by acts and series of acts which are declared, by the laws of the State of New Jersey, to be, to wit:

Any two or more persons who shall combine, unite, confederate, conspire or bind themselves by oath, covenant, agreement or other alliance:

a. To comit a crime; or
b. Falsely and maliciously to indict another for a crime or to procure another to be charged or arrested for a crime; or
c. /
d. To cheat and defraud a person of any property by any

means which are in themselves criminal; or

e. To cheat and defraud a person of any property by any means which, if executed, would amount to a cheat; or

f. / g. /

h. To commit any act for the perversion or obstruction of justice or the due administration of the laws.

Shall be guilty of a conspiracy and be liable to the same penalty as persons convicted of a misdemeanor.

That is what these moving defendants did do, they perverted or corrupted or obstructed justice and the due administration of the laws by the Paterson District Judge and the plaintiff was powerless to stop them from taking advantage of the conspiracy so caried on by the other defendants. As to the truth of these statements see the copies of the Affidavits in support of the claim which copies are annexed hereto.

6. (Paragraph 6 of defendants' Motion, to wit: Because so far as these defendants are concerned, the Complaint on its face clearly shows that the Statute of Limitation has run, . . .)

These defendants have no right to take advantage of the Statute of Limitations because they were made parties defendants in a suit filed here in this Court in 1927. Thereupon the defendant Harry Sussman disappeared. The U. S. Marshal went to make service on him and he could not be found. The Marshal certified him dead. Thereupon the plaintiff went to the house where he lived and made inquiry. Plaintiff was advised that they did not know where Sussman is or if he is dead or alive. Plaintiff made inquiry to the office of the registry of Death at Paterson, N. J., and there they gave him a death certificate of Harry Sussman.

Time went by and one day while walking through an intersection at Market Street, Paterson, N. J., there the plaintiff met the defendant, Harry Sussman. Plaintiff kept a lookout for him and while doing so he was given the truth by a restaurant girl.

Thereupon the plaintiff sued these defendants separately which lawsuit please see in this court. The defendant, Wm.

V. Rosenkrans, filed a motion to dismiss or to strike the complaint and dismiss the action. This said motion came up before Judge Fake and the defendant Rosenkrans began his argument by maliciously attacking this plaintiff and thus he stated to Judge Fake thus, to wit: It's his mind again. He wants to make money again. . . . There the Court interrupted him, stopped his nonsense and called up another case and thereafter directed that the two be coming into the chambers. The hearing then was conducted in the chambers and this plaintiff introduced the death certificate of the defendant H. Sussman. There was no order then made on the motion and the defendants did not care to have one. Thus these defendants by the threats to plead the conspiracy set out in the Complaint they tied up the hands of this Court. They themselves obstructed the administration of justice by this Court and not the Statute of Limitation. For these said reasons and for the malicious attacks made against him by cheap lawyers in the Courts this plaintiff was obliged to compile the authorities so compiled and annexed to the Complaint without which he had no standing in this Court.

And now the Answer of the Law:

Hyde vs. United States, 228 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114. Ann. Cas. 1914A. on page 1126, the United States Supreme Court says:

The fifth, sixth, seventh and eighth assignments of error invoke the statute of limitations in behalf of Hyde and Schneider. The plea of the statute as affected by overt acts was considered in United States vs. Kissel, 218 U. S. 601, 54 L. Ed. 1168, 31 Sup. Ct. 124, where it was declared that a conspiracy may be continuing one, and the doctrine is applicable to the case at bar unless there is something special in the facts regarding Hyde and Schneider which constitute a defense as to them. This is asserted. It is contended that the relation of Schneider to the conspiracy was only that of one rendering service as a servant of his Master (Hyde), in consideration of the salary paid to him by his master, and that he had not, within three years before the finding of the

indictment, participated in any way in the carrying out of the master's scheme, the object of the conspiracy. And from this it is contended the question arises whether Hyde is not also entitled to the protection of the statute of limitation in so far as he is charged with conspiracy with his employee, Schneider. But the fact that a salary was paid by one to another would not preclude a conspiracy between them. It might, indeed, mark a more humble criminal desire, and one which preferred a certain reward rather than take chances in the success of a criminal enterprise, and it was certainly not inconsistent with a full and active participation in the scheme. Indeed, Schneider, in a confession which we shall presently refer to stated that a salary and the certainty of employment was his inducement.

The conspiracy accomplished or having a distinct period of accomplishment is different from one that is to be continuous. If it may continue, being to it during its life as it was to it the moment it was brought into life. If each conspirator was the agent of the others at the latter time, he remains an agent during all of the former time. This view does not, as it is contended, take the defense of the statute of limitations from conspiracies. It allows it to all, but makes its application different. Nor does it take from a conspirator the power to withdraw from the execution of the offenses or to avert a continuing criminality. It requires affirmative action, but certainly that is no hardship.

Having joined in an unlawful scheme,

having constituted agents for its performance,

scheme and agent for its performance,

scheme and agency to be continuous until full fruition be secured, until he does some act to disavow or defeat the purpose he is in no situation to claim the delay of the law. As the offense has not been terminated or accomplished, he is still offending—offending as certainly, as we have said, as at the first moment of his confederation, and continuously through every moment of its existence.

The successive overt acts are but steps toward its accomplishment, not necessarily its accomplishment.

This is the reasoning of the Kissel case, stated in another way.

As he has started evil forces, he must withdraw his support from then or incur the guilt of their continuance. Until he does withdraw there is conscious offending. . . . See the Case as reported.

The plaintiff appeals to the Court and pleads his cause and warns the Honorable Court to look for a more serious crime, Kidnaping. The United States Marshal for the District of Columbia swears as follows:

As stated in my letter to you of April 4th, Dr. Hickling is dead and the names—William H. Fay and William J. Hazen —do not appear in either the city or telephone directory. I therefore return the papers for service on those three unexecuted. This office has no way of locating Mr. Fay or Mr. Hazen and the Welfare Board in this city has no record of them.

It can be that these fellows came from the West, corraled this plaintiff at the Union Station put him on the train and railroaded him West to Judge Ericksen of the defendant Utah Fuel Company. There are more revelations to be revealed.

To this day the plaintiff has not received any pleading of any kind from the defendant Utah Fuel Company and the defendant H. Collin Minton so this cause is headed for trial.

Wherefore, the plaintiff moves this honorable court to deny the Motion to Strike the Complaint and Quash services and to impose upon these moving defendants costs and this humble plaintiff shall pray forever and ever.

NICHOLAS J. CURTIS, LL.B.,
Plaintiff Appearing in Person,
No. 211 Woodside Ave.,
Ridgewood, N. J.

Subscribed and sworn to before me
this 18th day of April, A. D. 1940.

HELEN Q. DUNBAR,
Notary Public.

STATE OF NEW JERSEY,
COUNTY OF BERGEN. } ss.:

I do hereby certify that I have served copy of the foregoing Affidavit upon Addison P. Rosenkrans by personally delivering it and leaving it with his Secretary in his office at Paterson, New Jersey.

NICHOLAS J. CURTIS,
Plaintiff.

Dated this 18th day of April,
at 10:20 o'clock A. M., 1940.

AFFIDAVIT

STATE OF NEW JERSEY,
COUNTY OF PASSAIC. } ss.:

Dan Curtis, of lawful age, being first duly sworn in accordance with the law, deposes and says:

1. I am a brother of Nicholas J. Curtis and I am making this affidavit in his behalf and for him to use it in the matter of Nicholas J. Pappas, who is by lying trying to deprive him of his wages.

2. On or about the 12th day of June, 1925, I came to Paterson, New Jersey, from the City of Washington, D. of C., and went to No. 88 Water Street to live, whereat I am making my home. On the aforesaid day my brother, Nicholas J. Curtis, came to Paterson, New Jersey, also, and went to live in No. 9 West Broadway, and on or about the 14th day of said month he went to work in the Pappas Sea Food Restaurant, N. 7 W. Broadway, Paterson, N. J., as counterman, etc., and therein worked up to or about the 9th day of October, 1925. Said place or restaurant is on my way to my home and back to my work and as such I have the occasion of seeing my brother every day working therein in the dining room and now and then I was visiting said restaurant, one of which visits was with George Curtis and Gust Livis.

When I heard that Nicholas J. Pappas was not paying my brother, I went to the aforesaid restaurant and met my brother and Miss Pappas, and in her presence I asked

my brother to leave his employment and try and collect his wages.

(Signed) DAN CURTIS,
Affiant.

Subscribed and sworn
.....day of February, 1925.

(Signed) DAVID COHN,
Notary Public of the City
of Paterson and State of
New Jersey.

AFFIDAVIT

STATE OF NEW JERSEY, } ss.:
COUNTY OF BERGEN. }

George P. Curtis, of lawful age, being first duly sworn upon his oath, deposes and says:

1. That he is acquainted with Nicholas J. Curtis and knows him all his lifetime and has lived with him for a good many years.

2. That on or about the 13th day of July, 1925, he visited said Nicholas J. Curtis at the Pappas Sea Food Restaurant, No. 7 West Broadway, Paterson, New Jersey, whereat and wherein he, said Curtis, was employed as counterman, etc., whereat and wherein and on which date he met Nicholas J. Pappas, the proprietor of said place or sea food restaurant, who, said Pappas, asked him to work for him as waiter in the aforesaid food restaurant. Whereupon and then and there took said job and went to work.

4. That while talking with said Pappas about working for him and the wages he was to be paid by the aforesaid Nicholas J. Pappas, he, said Pappas, told him that he was paying the counterman, or the said Nicholas J. Curtis, the sum of $25.00 a week.

5. That he first heard of the above named place, or the Pappas Sea Food Restaurant, on or about the last day of June, 1925, when he was visited by the above named Nicholas J. Curtis in the Leonori Hotel, New York City, whereat he was employed.

GEORGE P. CURTIS.

Subscribed and sworn to before me
this 18th day of February, A. D. 1926.

A. R. WINANS,
Notary Public of Ridgewood,
Bergen County, New Jersey.

AFFIDAVIT

STATE OF NEW JERSEY,
COUNTY OF PASSAIC. } ss.:

Gust Livis, of lawful age, being first duly sworn upon his oath, deposes and says:

1. I am the owner and proprietor of Van Houten, etc., Lunch Room, No. 87 Van Houten Street, Paterson, New Jersey, and live at No. 88 Water Street, of said city.

2. On or about the 13th day of June, 1925, my cousin, Nicholas J. Curtis, visited me and my place of business, as well as my home, and on or about the 14th day of said month he went to work in the Pappas Sea Food Restaurant, No. 7 W. Broadway, City, as counterman, etc. Said restaurant being on the way to my home and back to my work, to my lunch room, and as such I go by it three and four times a day, and as such I was seeing my cousin every day working therein as counterman, etc., and on one occasion I, in company with Dan Curtis and George Curtis, went into said restaurant and had a cup of coffee, etc.

When I heard that said Pappas was not paying my cousin, I advised by cousin to leave his employment, as said Pappas is well known that he does not pay his men.

(Signed) GUST LIVIS,
Affiant.

Subscribed and sworn to before me
this ..... day of February, 1926.
(Signed and Sealed by the Notary)

.....
Notary Public of the City of
Paterson and State of New
Jersey.

AFFIDAVIT

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.:

Kiriacos Avramidis, being duly sworn on his oath, says:

I reside at No. 47 Columbus Avenue, in the City of New York and State of New York, and was employed by the Pappas Sea Food Restaurant during the month of August and first part of September, 1925, as cook, and while working there the said Nicholas Curtis was also employed there as counterman and waiter and at times as cashier. I also know that Nicholas J. Curtis was to get $25.00 per week.

I further know that Nicholas J. Curtis was still employed by the Pappas Sea Food Restaurant when I left, which was in the month of September, 1925. I also know that said Nicholas J. Curtis was not being paid by Pappas or the Pappas Sea Food Restaurant.

(Signed) KIRIACOS AVRAMIDIS.

Subscribed to and sworn to before me
this 8th day of February, 1926.

(Signed) JOHN GARRETT,
Notary Public, New York County.

New York County Clerk's No. 569.
New York County Register's No. 7006.
Commission expires March 30, 1927.

AFFIDAVIT

STATE OF NEW JERSEY,
COUNTY OF PASSAIC. } ss.:

John Gall, of lawful age, being first duly sworn upon his oath, deposes and says:

1. I am an attorney-at-law, admitted to and practicing law before the courts of the State of New Jersey.

2. On or about the 16th day of October, 1925, I was retained by Nicholas J. Curtis as attorney to sue Nicholas J. Pappas, Helen Pappas et al., for wages.

3. On the trial of said cause, Helen Pappas, one of the defendants, did not testify. Nicholas J. Pappas, the other de-

fendant, testified as follows, to wit:

(a) Nicholas J. Curtis worked two months and 19 days from July 16th to October 5, 1925.

(b) That in June, 1925, on and after the 14th day, he, said Nicholas J. Pappas, was sick in bed and not in his place of business or restaurant.

(c) That he did not hire said Nicholas J. Curtis as counterman and he, Curtis, did not work as such in his place, but as porter.

(d) That he did not agree to pay to said Nicholas J. Curtis the sum of Twenty-five ($25.00) per week. I further swear and say that Harry Sussman, one of the witnesses, of said defendant, testified as follows, to wit:

(a) That he was a regular visitor of the restaurant of said Pappases or the Pappas Sea Food Restaurant, No. 7 West Broadway, Paterson, New Jersey.

(b) That he had never seen Nicholas J. Curtis work therein as counterman, but as dish-washer and porter and sometimes waited on customers, leaving the other work to do so.

(c) That the said Nicholas J. Curtis gave him money to attend the Majestic Theatre on Main Street, Paterson, New Jersey. The said Nicholas J. Curtis said his picture (N. J. Curtis) was shown on the screen and that he wanted Sussman as witness thereof, against the said theatre.

Furthermore, I heard Mathew Leins testify of the kind of work said Nicholas J. Curtis was doing for two weeks in his restaurant the last part of February, 1925, and the wages he, said Leins or Mustakis, paid him.

No other witnesses.

(Signed) JOHN GALL,
Affiant.

Subscribed and sworn to before me
this 23rd day of March, A. D. 1926.

(Signed) JARED T. SEELY,
Notary Public, Paterson, N. J.

AFFIDAVIT

STATE OF NEW JERSEY, } ss.:
COUNTY OF PASSAIC. }

Mary L. Stagg, being duly sworn on her oath, says:

That she is employed in the Free Public Library, located on Broadway, in the City of Paterson, County of Passaic and State of New Jersey, and that on the sixteenth day of June, Nineteen Hundred and Twenty-five (1925) your deponent received an application for reader's card of one Nicholas J. Curtis, in the Club Circulation of the Free Public Library.

Your deponent says that the said application gave the address of the said Nicholas J. Curtis as No. 9 West Broadway, in the City of Paterson, County of Passaic and State of New Jersey, and gave his occupation as a waiter.

Your deponent further says that she does not know the said Nicholas J. Curtis, nor has she ever spoken to him prior to the making of the application on the sixteenth day of June, Nineteen Hundred and Twenty-five (1925), and which application recited that Nicholas J. Curtis was waiter working at 7 West Broadway, and residing at 9 West Broadway, in the City of Paterson, County of Passaic and State of New Jersey.

(Signed) MARY L. STAGG.

Subscribed and sworn to before me
this 9th day of February, 1926.

(Signed) CHARLES P. LONGWELL,
Notary Public.

AFFIDAVIT

STATE OF NEW JERSEY, } ss.:
COUNTY OF PASSAIC. }

Charles Ariento, being duly sworn on his oath, deposes and says:

1. That in the month of June and for a long time last passed and for a number of weeks thereafter and at the time of the writing of this Affidavit was and he now is employed

by the Paterson Milk Company as a delivery man delivering milk to the restaurants of the City of Paterson and especially to the Pappas Sea Food Restaurant, No. 7 W. Broadway, city, and had the occasion to see Nicholas J. Curtis there as waiter, counterman and in charge of the aforesaid restaurant.

2. Your deponent says that he has seen Nicholas J. Curtis working at the Pappas Sea Food Restaurant, and had the occasion to speak to him relative to the deliveries of milk for the Pappas Sea Food Restaurant, and on other business matters concerning the welfare of the Pappas Sea Food Restaurant.

3. Your deponent says that he has delivered milk to the Pappas Sea Food Restaurant from the time he was first employed by said milk concern and especially throughout the months of June, July, August and September, Nineteen Hundred and Twenty-five, and on every delivery saw Nicholas J. Curtis working there as counterman and waiter, and on several occasions or almost all the times received payment from Nicholas J. Curtis for the deliveries of milk.

(Signed) CHARLES ARIENTO.

Subscribed and sworn to before me
this 11th day of February, 1926.

(Signed) C. C. FROMMETT,
Notary Public of New Jersey.

AFFIDAVIT

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } ss.:

Eustathios Aravanis, of lawful age, from No. 500 Central Avenue, East Orange, New Jersey, being duly sworn upon his oath, deposes and says:

1. That he knows Nicholas J. Curtis since schooldays or since he was a boy. That on or about the 30th day of August, 1925, he, in company with Apostolos Aravanis, went to the Pappas Sea Food Restaurant, No. 7 W. Broadway, Paterson, New Jersey, whereat and wherein they met Nicholas J. Curtis working as counterman; whereat and wherein they,

with Apostolos Aravanis, waited until said Curtis' day was over and while thus awaiting they became acquainted with Mrs. Pappas, who told them that said Curtis is a good man, good worker, and that they were pleased with his services, and when Curtis quit for the day they took him and went to East Orange and spent the day.

(Signed) EUSTATHIOS ARAVANIS.

Sworn and subscribed before me,
a Notary Public of the State of New Jersey.

(Signed) L. W. CHRISTOPHERSON.

My commission expires July 29, 1930.

(Seal)

AFFIDAVIT

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

Apostolos Aravanis, of lawful age, being first duly sworn upon his oath, deposes and says:

1. That he is a resident and business man of the City of East Orange, New Jersey, owner and proprietor of Garden Market, 359 Main Street.

2. That he knows Nicholas J. Curtis since 1907, but is not related with him whatsoever.

3. That on or about the 30th day of August, 1925, he, in company with Eustathios Aravanis, went to the Pappas Sea Food Restaurant, No. 7 West Broadway, Paterson, New Jersey, whereat and wherein they met Nicholas J. Curtis, working therein as counterman; and whereat and wherein, they, with Eustathios Aravanis, waited for said Nicholas J. Curtis until his quitting time was up, and while thus waiting they became acquainted with Mrs. Pappas, who told him that said Nicholas J. Curtis was a good man and that they were pleased and satisfied with his services. And when Curtis' day or working hours was over they took him and went to East Orange and spent the day.

(Signed) A. ARAVANIS.

Sworn and subscribed to before me
this 4th day of February, 1926.

(S. L.) JOHN J. WHELAN, JR.

Title 18, Sec. 52. (Criminal Code, Sec. 20.)

Depriving citizens of Civil rights under color of State Laws.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both. (R. S. Sec. 5510,; Mar. 4, 1909, c. 321, Sec. 20, 35 Stat. 1092.)

Title 18, Sec. 54. (Criminal Code, Sec. 21.)

Conspiracy to prevent officer from performing duties.

If two or more persons in any State or Territory, or District conspire to prevent by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; . . ., each of such persons shall be fined not more than $5,000, or imprisoned not more than six years, or both. (R. S. Sec. 5518; Mar. 4, 1909, c. 321, 25 Stat. 1092.)

Notes of Decisions under the act: "Conspiracy" defined.—A conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end. The word "corrupt," in the sense used, means "unlawful." The intendment of this definition is that to conspire to do an unlawful act, or to conspire to accomplish a result which may in itself be lawful, but to do it in an unlawful manner, or an unlawful agreement to accomplish an unlawful result, is a conspiracy. United States v. Johnson, 26 F. 682. See also Wright et al. v. United States 108 Fed. Rep. 805.

Title 18, Sec. 88. (Criminal Code, Sec. 37.)

Conspiring to commit offense against United States. If

two or more persons conspire either to commit any offense against the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years or both. (R. S. 5440; May 17, 1879, c. 21; Mar. 4, 1909, c. 321)

Note 21 under the Section: "Offenses in general.

This statute creates the offense of conspiracy. Reilly v. U. S. 106 Fed. 894, reversed on another ground, 188 U. S. 375, 47 L. Ed. 508;

This statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government. Haas v. Henkel, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112. Numerous other cases follow here.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA,
THIRD JUDICIAL CIRCUIT.
Sct.

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original pages 33, 34 and 50 of the Transcript of Record in the case of Nicholas J. Curtis Plaintiff vs. Utah Fuel Company, et al., Defendants, No. 7525, on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 22d day of October, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the United States the one hundred and sixty-fifth.

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals,
Third Circuit.

UNITED STATES OF AMERICA
DISTRICT OF NEW JERSEY } ss:

I, Benjamin F. Havens, Clerk of the United States District Court, District of New Jersey, do hereby certify that on May 2, 1940 the plaintiff in the above stated cause applied to me as clerk in writing for entry of the defaults of Dr. E. R. Murphy and Charles W. Kutz, both defendant in this suit, that on May 5, 1940 he also applied to me in writing to enter default of Mark Tuttle one of the defendants in this cause; that on June 18, 1940 he also applied to me in writing for the entry of defaults against Dr. Fred W. Taylor, Dr. Leslie J. Paul and The Bamberger Coal Co., all defendants in this suit.

That at the time said applications were made no answer had been filed by any of the above defendants and no answer has been filed at this date.

I refused to enter the defaults as I considered that the Court had no jurisdiction over these defendants and that although service of the summons and complaint had been made on these defendants by the United States Marshal for their respective districts I did not consider the service legal.

I attach herewith certified copies of the above mentioned applications for default.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed the seal of the said Court, at Trenton, in said District this 23rd day of October, nineteen hundred and forty.

BENJAMIN F. HAVENS, Clerk, U. S.
District Court, District of N. J.
by Charles S. Chevrier, Deputy

APPELLANT'S EXCEPTION AND NOTICE THAT HE WILL DO HIS BEST TO APPEAL THE CASE TO THE UNITED STATES SUPREME COURT.

TO THE ABOVE ENTITLED COURT AND ITS CLERK THEREOF.

On this 16th day of December, A. D., 1940, appellant has received from this court a paper Per Curiam dismissing appellant's appeal.

The appellant feels himself agrieved by the judgment of this Court and gives notice that he will do his best to carry on the plot to the United States Supreme Court.

NICHOLAS J. CURTIS
No. 106 Mansion Street,
Poughkeepsie, New York.

Dated this 16th day of December, 1940.

And afterwards, to wit, on the 7th day of November come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable Albert B. Maris and Honorable Herbert F. Goodrich, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 14th day of December come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

Appeal from the District Court of the United States for the District of New Jersey

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Before BIGGS, MARIS, and GOODRICH, Circuit Judges
PER CURIAM.

The appeal is dismissed.

Before BIGGS, MARIS and GOODRICH, Circuit Judges

On appeal from the District Court of the United States, for the District of New Jersey.

This cause came on to be heard on the transcript of rec-

ord from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the appeal from the judgment of the said District Court in this case be, and the same is hereby dismissed with costs.

Philadelphia,
December 14, 1940

JOHN BIGGS, Jr.
Circuit Judge

Endorsements—
Order Dismissing Appeal etc.,
Received & Filed
Dec. 14, 1940
WILLIAM P. ROWLAND, Clerk

UNITED STATES OF AMERICA
EASTERN DISTRICT OF PENNSYLVANIA
THIRD JUDICIAL CIRCUIT

Sct.

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original Record as submitted by Appellant, with additions thereto, and proceedings in this Court in the case of

NICHOLAS J. CURTIS,
Plaintiff-Appellant

vs.

UTAH FUEL COMPANY,
Defendant-Appellee

(No. 7525)

on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 8th day

of February in the year of our Lord one thousand nine hundred and forty and of the, Independence of the United States the one hundred and sixty-fifth.

WM. P. ROWLAND, Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

Statement of the Points on which Appellant Intends to Rely and of the parts of the Record which appellant thinks necessary for the consideration thereof.

The appellant intends to rely upon the contention that the District Court erred:

1. In not peremptorily denying the defendants Motion (demurrer) and Special Appearance to dismiss the declaration.

2. In not denying defendants' Motion (demurrer) and Special Appearance as prayed in plaintiff's Opposing Affidavit.

3. In not acting upon the plaintiff's Opposing Affidavit Opposing the defendants' Motion to Dismiss the Complaint and Special Appearance thereto.

4. In not acting upon plaintiff-appellant's Application for Commission to Take Depositions and Examine Witnesses residing out of the United States and in the Kingdom of Greece.

5. In not acting upon plaintiff-appellant's Motion and Application for Commission to take the Depositions and Examine Parties and witnesses residing out of State and in the State of Utah at Salt Lake City, Utah.

6. In not acting upon plaintiff-appellant's Motion and Application to take Deposition and Examine Parties and Witnesses residing out of State and in Utah County, Provo, Utah.

7. In not acting upon plaintiff-appellant's Motion and Application for Commission to take Depositions of witnesses residing at Price, Carbon County, State of Utah.

8. In taking plaintiff-appellant's Application for Default Judgment away from the Clerk of the District Court to whom it was made.

9. In demanding of the plaintiff his copy of the said Application for entry of default judgment made to the Clerk of the District Court in order to go by with and enjoin appellant from enforcing his said Application.

10. In enjoining plaintiff-appellant from requiring of the Clerk of the District Court the entry of default judgment against the defaulted defendants.

11. In enjoining the plaintiff-appellant from enforcing his rights to the entries of defaults against seven of the parties defendants-appellees.

12. In holding that it will make the statement made by H. Collin Minton, Jr., in open Court on July 8th, 1940, that he then on that date was appearing for all of those defendants who are not represented by some other attorney.

13. In refusing to give full force and effect to the Federal Rules of Civil Procedure for the District Courts of the United States, Adopted by the Supreme Court of the United States Pursuant to the Act of June 19, 1934, Ch. 651.

14. In refusing to give full faith and credit as evidence of the Docket Entries of the Record; and of the record of the case itself.

15. In refusing to give full faith and credit to the Public Acts of the Legislature of the State of Utah.

16. In refusing to give full faith and credit to the Judicial Proceedings of the Supreme Court of the State of Utah.

17. In refusing to give full faith and credit to the Proceedings of the Industrial Commission of the State of Utah.

18. In refusing to give full faith and credit to the Certification of Dr. William R. Tyndale and Dr. F. F. Hatch who are the keepers of the Record of the Case.

The plaintiff-appellant deems the entire record as filed to be necessary for the consideration of the contentions above enumerated.

NICHOLAS J. CURTIS
Plaintiff-Appellant Appearing in Person.
Address: No. 106 Mansion St., Poughkeepsie, New York

TO:
Minton & Rogers,
Attorneys for themselves and
Utah Fuel Company and those
named in the Special Appearance,
Trenton Trust Bldg.,
Trenton, New Jersey.
A. P. Rosenkranz,
Paterson, N. J.

STENOGRAPHIC TRANSCRIPT:
HEARING OF MOTION RE: UTAH FUEL CO., ET ALS
MAY 6, 1940

APPEARANCES:
Nicholas J. Curtis, pro se
H. COLLIN MINTON, ESQ., Pro se and for Utah Fuel Co.
Dr. Frederick Dunn
Dr. A. C. Callister
Dr. E. D. Smith
Gov. Charles E. Maybe
W. D. Sutton
Mark Tuttle
} appearing specially

1. Notice of motion for order vacating and setting aside service of summons and complaint as to Carol C. Johnson Pro Se.

2. Notice of Motion to strike out complaint as to Utah Fuel Co. and H. Collin Minton.

Before Hon. Thomas Glynn Walker Judge, at the Post Office Building, Newark, N. J., on May 6, 1940.

Mr. Curtis: May it please the court—

The Court: Mr. Curtis, and the other gentlemen who appear, will you place your names upon the record so I have

all the appearances.

Mr. Minton: I appear for the Utah Fuel Company, pro se and for Doctor Frederick Dunn, Doctor A. C. Callister, Doctor E. D. Smith, Governor Charles E. Maybe, W. D. Sutton.

The Court: There is also a letter of record which is now offered to the Clerk and is to be marked as being received and as an exhibit, from Charlton Ogburn signed by Carol C. Johnson, in which he asks to be relieved of arguing this motion orally and requests the court to receive same on his brief.

The Clerk: Marked Court Exhibit 1.

The Court: And who is he representing, Mr. Johnson?

Mr. Curtis: Himself, your honor.

The Clerk: He represents Carol C. Johnson.

The Court: All right, Mr. Curtis. You may proceed.

Mr. Minton: I believe, your honor, I am the moving party.

Mr. Curtis: I have made two affidavits, one for each motion with points and submit my part of those affidavits, your honor. Three of the defendants are in default, and their defaults have been entered with the Clerk of this court. Now, I say that they make certain defenses there for the court and the court's officials, the governor and so on.

The Court: You are offering a letter which is on the stationery of the Governor of the State of Utah?

Mr. Curtis: Yes, your honor.

The Court: Dated April 29, 1940. It will be received and marked.

Mr. Curtis: And here is another from the—

The Court: Just a minute, sir.

The Clerk: Marked Exhibit P-1.

Mr. Curtis: That is from the District Court of Utah County; word comes to take the depositions either the judge of the court or the Clerk of the court.

The Court: You are now offering a letter which is addressed to the Clerk of the District Court of Utah County?

Mr. Curtis: And he has answered thereto.

The Court: Dated April 27, 1940, by Mr. Nicholas J. Curtis and the answer of Mr. C. A. Grant, Utah County

clerk thereto. It will be received and marked.

Mr. Curtis: Then here are copies—

The Court: Just a minute.

The Clerk: Marked Exhibit P-2.

Mr. Curtis: These are copies of the default that have been answered. I don't believe it is necessary.

Now, as to the form they picked on the form of the pleadings, was followed by that.

The Court: And you are now offering—

Mr. Curtis: I am offering now that. Further I have nothing to say and submit the case on the affidavit.

The Court: You are offering a bill of B. B. Jarvis, Clerk of the Supreme Court of Appeals to Mr. Nicholas J. Curtis dated March 16, 1939, To copy of declaration in Sarah Long Administratrix vs. Babcock Lumber and Boom Co., CC 270 in the amount of $1.05. It will be received and marked.

(Received and marked Exhibit P-3)

Letter of B. B. Jarvis, dated March 16, 1939, on stationery of the Supreme Court of Appeals, Charleston, State of West Virginia, addressed to Mr. Nicholas J. Curtis. It will be received and marked.

(Received and marked Exhibit P-4)

And a declaration entitled State of West Virginia, County of Tucker, in the Circuit Court thereof, Sarah Long Administratrix of the Estate of Shrader Long deceased vs. Babcock Lumber and Boom Co., trespass on the case. Attested a true copy by B. B. Jarvis, Clerk Supreme Court of Appeals, State of West Virginia. It will be received and marked.

(Received and marked Exhibit P-5)

The Court: And where are the affidavits?

Mr. Curtis: Your honor, I filed them with the Clerk and served the other side with copies.

Mr. Minton: If the court please, I am appearing to move to strike the Bill of Complaint and I will simply rely upon my motion which I filed. It is rather complete. It sets out my grounds. I won't endeavor to go into it. Your honor will take it under consideration, but I would like to cite one

case for your honor possibly to review, Crabtree vs. Steele, Supreme Court of Iowa 1908 found in 115 NW 593. That is on the motion to strike, as to the Governor of the State of Utah and State Auditor, State Treasurer I am appearing specially.

The Court: May I have that again, the Governor of the —

Mr. Minton: Governor Charles E. Maybe of the State of Utah and the other parties are named here, Mark Tuttle and W. D. Sutton.

The Court: Is Mark Tuttle the auditor?

Mr. Minton: I believe so. They are on the Board of Inquiry, State of Utah. Their names are set out in the supplemental complaint.

The Court: You are appearing specially.

Mr. Minton: I am appearing specially if that is the way to do it. In other words, they are residents of the State of Utah and endeavor is to be made—

Mr. Curtis: May I say—(interrupted)

The Court: Just a minute, Mr. Curtis, I will give you each an opportunity to be heard, one at a time.

Mr. Minton: On the third I was served with notice of motion before your honor next Monday for permission to examine witnesses out of the United States in the Kingdom of Greece, and I would appreciate very much if we could have that matter considered with all the other matters before your honor so as possibly to avoid the necessity of being here next Monday, if Mr. Curtis will agree to that, having the entire matter considered by the court without further argument.

Mr. Curtis: I have no idea, I didn't even prepare anything, your honor.

The Court: You say you are not ready to go ahead?

Mr. Curtis: I would sooner be here next Monday for the deposition.

The Court: Well, is there anything else in this matter other than that?

Mr. Curtis: My part is in the affidavit, your honor.

The Court: Will you bring it all before the court next

Monday?

Mr. Curtis: Yes, I will be here.

The Court: Because the court is anxious to decide this case. I say the court is anxious to decide this case, the motions, that have been put before it. There was one last Monday and now I have the motion of today, and are there any others except the one that you refer to as being ready or that you will be ready on next Monday?

Mr. Curtis: I have still another for next Monday, an application to state the case for such a time as the depositions are taken and returned and filed with the Clerk and I have notice here for that and I am going to have it come up next Monday.

The Court: All right. Well, will you serve the notice now?

Mr. Curtis: Yes, I will serve the notice now.

The Court: And that is an application to stay the proceedings until the depositions have been taken in Greece?

Mr. Curtis: Yes, your honor, until the depositions have been taken in Greece and also the depositions here and I am working to—I will have them all ready by Monday.

The Court: Anything further?

Mr. Minton: Only this, your honor, if Mr. Curtis would submit these affidavits, or whatever papers he has to your honor this week sometime, and send me copies so that if I could avoid—

Mr. Curtis: I beg your pardon, you have them all a week ago.

Mr. Minton: Next Monday frankly is not convenient to me and I am submitting my case simply on the moving papers.

Mr. Curtis: You have copy of the affidavit about a week.

Mr. Minton: If they are the ones, that's all right, I have them, so I will submit our case as it is, your honor, on the matter of striking the complaint. I, personally, am made a defendant. I forgot to state I appeared for myself, but there seems to be no relief asked as to me so I would ask that I be stricken as a party defendant.

The Court: All right, gentlemen, thank you.